UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION, ET. AL

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

December 7, 2007

10:20 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

HEARING re Motion of the Equity Security Holders to Adjourn Disclosure Statement Hearing and Equity Purchase and Commitment Agreement Hearing

HEARING re Expedited Motion for Order Under 11 U.S.C. Sections 105(a), 363(b), 503(b), and 507(a) Authorizing and Approving Amendment to Delphi-Appaloosa Equity Purchase and Commitment Agreement

HEARING re Motion For Order Approving (i)Disclosure Statement; (ii)Record Date, Voting Deadline, and Procedures for Temporary Allowance of Certain Claims; (iii)Hearing Date to Consider Confirmation of Plan; (iv)Procedures For Filing Objections to the Plan; (v)Solicitation Procedures for Voting on Plan; (vi)Cure Claim Procedures; (vii) Procedures for Resolving Disputes Relating to Post-Petition Interest; and (viii) Reclamation Claim Procedures.

Transcribed By: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Please be seated. Okay. We're back on the record in Delphi Corporation. I have before me presently the debtors' motion for approval of their entry into the Delphi Appaloosa investment agreement amendment or in the terms that the people have been using throughout this hearing, the December 3 proposed amendment to the EPCA, E-P-C-A, agreement that was entered into between the debtors, on the one hand, and a group of plan investors led by Appaloosa in July of this year and approved by order of the Court on August 2nd, 2007.

The motion, I believe, as contemplated by the debtors was one that was modified during the course of November and December to reflect ongoing negotiations among the debtors and their key constituents over the terms of the proposed amendment. That is, it was originally filed seeking approval of a somewhat different amendment. That request resulted in the filing of numerous objections including by both of the two official statutory committees, the creditors' committee and the equity committee. The debtors and those parties, as well as the plan investors, engaged in continued negotiations at the same time that they also conducted, along with other objectors, a litigation discovery process. The negotiations resulted in the withdrawal of substantially all of the objections to the motion in light of the amendments to the proposed amendment that were agreed to on December 3rd and that are currently

before the Court. Discovery proceeded, however, because there were two remaining objections. And in light of those objections, the Court held an evidentiary hearing yesterday over the course of the entire day which I heard four witnesses in support of the motion and as well accepted into evidence and considered numerous exhibits agreed to as far as admissibility is concerned by the debtors and the two objectors.

The motion seeks approval by the Court because it is an action out of the ordinary course under 363(b) of the Bankruptcy Code. The consequence of the debtors' entry into the amendment to the EPCA is, among other things, that the debtor would continue to be obligated in respect of certain payment obligations as well as an alternative transaction fee under certain circumstances. And, in a more general sense, the amendment to the EPCA forms the basis for, along with a number of other settlements including the debtors' settlement with GM and its agreements with its various unions for the Chapter 11 plan that has been filed and for which the debtor is seeking approval of its disclosure statement, which is also on for today for my consideration.

The standard for consideration of a motion under Section 363(b) is one that I've addressed previously in these cases. Generally speaking, the Court must consider whether the transaction for which the debtors seek approval is supported by good business reasons and good business judgment. As set forth

by the second circuit in In re Orion Pictures Corporation, 4 F.3d 1095 (2d Cir. 1993), cert. dismissed, 511 U.S. 1026 (1994), the Court has a responsibility to exercise business judgment in respect of transactions sought to be approved out of the ordinary course. I believe that this is in light of the fact that the debtor is in a bankruptcy case and formally beholden to numerous constituents under the supervision of the Court. As observed by Judge Garaufis in the eastern district, under this rule, the trustee, in this case the debtor-in-possession, and the Court in a bankruptcy proceeding must exercise their discretion fairly in the interest of all who have had the misfortune of dealing with the debtor. Frostbaum v. Ochs, O-C-H-S, 277 B.R. 470, 475, (E.D.N.Y. 2002).

I guess it's true that any bankruptcy case is a misfortune. However, the Court approaches some debtors and the parties approach some debtors with a great deal more skepticism than others. It is my experience with these debtors, as well as my conclusion as to the result of yesterday's evidentiary hearing, that these debtors from their board through their senior management, and certainly their professionals, take their responsibilities as debtors and debtors-in-possession with the utmost seriousness and have conducted themselves accordingly. And nevertheless, in a bankruptcy context, unlike a non-bankruptcy context, actions out of the ordinary course are noticed up for approval with the opportunity to object and

have a hearing. And the Court takes into account in addition to the normal review of the business judgment of a debtor, which I'll discuss in a moment, the views of other constituents who are presumably -- and I believe here it is at least the case with a number of the constituents -- intimately familiar with the debtors' business and reorganization effort. That is, of course, particularly true of the views of official statutory committees who have fiduciary responsibilities to their constituents. Here, the official creditors' committee which acts as a fiduciary for all unsecured creditors and the official equity committee which acts as a fiduciary for all equity holders.

In addition, the second circuit has been clear that in a bankruptcy case even where the committees may be silent, the Court needs to consider -- and I believe this is separate and apart from the state court -- application of the business judgment test that the debtors are undertaking the proposed action as an exercise of their own independent good business judgment and that they are not simply adhering to the demands of a particular constituency or party in interest, which might include, for example in this case, the plan investors or GM or one of the other parties who did not object originally to the motion as originally filed. See In re Lionel Corporation, 722 F.2d 1063 (2d Cir. 1983).

Now that being said, it is also clear to me that

neither the second circuit nor Congress intended bankruptcy judges in presiding over a motion for approval of an action out of the ordinary course to delve into the minutia of a debtors' business judgment. And that is particularly the case, again, where creditor and other interested party sentiment is either supporting the requested relief or does not oppose it. Indeed, I believe that a good measure of the state court business judgment test applies in bankruptcy cases as set forth in In re Integrated Resources, Inc., 147 B.R. 650, 657-656 (S.D.N.Y.) by then District Judge Mukasey and additionally, and I think quite cogently, by Judge Gerber in In re Global Crossing, Ltd., 295 B.R. 726, 742-743 (Bankr. S.D.N.Y. 2003) in which he considered a quite analogous situation where an original plan investor deal or acquisition had fallen through for various reasons and was considering the advisability of the alternative or the new direction proposed to be taken by the debtor. As Judge Mukasey articulated, the business judgment rule is a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company. The business judgment rule's presumption shields corporate decision makers and their decisions from judicial second guessing when the following elements were present: (1)a business decision; (2)disinterestedness; (3)due care; (4)good faith; and (5)according to some Courts and commentators, no

abuse of discretion or waste of corporate assets. Parties opposing the proposed exercise of a debtors' business judgment have the burden of rebutting the presumption of validity.

Thus, generally a Court will assess itself the merits or fairness of business decisions only when a transaction is one involving a predominantly interested board with financial interests in the transaction adverse to the corporation. Moreover, the appropriate test is the "entire fairness" of a transaction rather than the business judgment rule only "in the face of elicit manipulation" of a board's deliberative processes by self-interested corporate fiduciaries. Of course, there is a wrinkle in or a variation in that standard when it becomes clear that a company is for sale and a takeover becomes inevitable. Which the directors are obligated to secure a maximum value for those to whom they are fiduciaries. And as Judge Mukasey further notes in Integrated Resources, in a bankruptcy case, a board's fiduciary duties extend beyond the shareholders to all creditors as well. Again, as Judge Mukasey prefaces his analysis of the business judgment rule, these business judgment rule principles have "vitality by analogy" in Chapter 11. And I agree that's a very apt description of them because obviously Chapter 11 lends a unique context to a board's deliberations. And a Court, as I said before, must be particularly concerned that the board has taken into account that context including the legitimate views of the debtors'

constituents. And if it doesn't then the Court obviously will pay close attention to them.

As far as the facts are established before me, as I noted before, by order dated August 2nd, 2007, I approved the EPCA that is still currently in effect and that formed the basis for a consensual plan that the debtors filed in early September as contemplated by the EPCA. That plan provided for distributions to the debtors' creditors and shareholders that had the support of both official committees and at least at that stage, apparently the support of every other party-in-interest. At least there was no vociferous objection. The building block or basis for that plan or a critical building block or basis for that plan was the July EPCA in that it provided for, among other things, an aggregate potential cash investment of 2.55 billion dollars by a group of plan investors in return for a stake in the debtors' reorganized equity.

It was not and it is not today as is proposed to be amended a takeover plan. While the plan investors and, in particular, Appaloosa will clearly play an important role in the reorganized debtors under the proposed transaction, the plan investors will not control the debtors. And a substantial portion of the debtors' equity under the modified agreement will be going to the debtors' unsecured creditors with a right to participate in that equity under various forms of conditional consideration, warrants and the like by the

debtors' existing shareholders.

Nevertheless, the debtors engaged in a process that I considered at the hearing in July in connection with the EPCA whereby they tested the market and one potential competing investor, or lead investor, Highland Capital, did significant due diligence and made a proposal at that time which the board considered and which the board was a data point for the parties and the Court when the original EPCA was approved. It was the board's determination and ultimately my determination that the EPCA was the highest and best proposed transaction. At that time, while it was obvious to one who took the time to read the EPCA that it contained numerous conditions, it was not highlighted by any party to the Court that those conditions were incapable of being met or even reasonably incapable of being met. However, shortly after the Court's approval of the EPCA, it became clear to the parties and in one of the periodic conferences before the Court, the debtor informed the Court that the debtors had concluded that it would be substantially or seriously difficult for the debtors to raise all of the proposed exit financing upon which the Chapter 11 plan that was attached in outline form to the EPCA was premised. And it has subsequently appeared that the debtor would not be able to raise, in light of the substantially changed condition of the capital markets starting in the summer of 2007, approximately a billion nine of exit financing that had been contemplated by

that original plan.

I should note that in August, if not before, but certainly at that time, it appeared clear to me and I believe to anyone whose knowledgeable about these debtors that they have achieved all -- I would go so far as to say all, at least substantially all, but I would go even farther than that -- of their so-called Chapter 11 transformation goals. I believe this is an important fact to keep in mind in considering the debtors' exercise of their business judgment in respect of the motion before me.

Some companies file Chapter 11 simply to rejigger their capital structure. They're, for one reason or another, overburdened with debt but they do not believe their business needs to fundamentally change. The uses of Chapter 11 for that type of company are clear and although the negotiations over the amount of the adjustment to the capital structure may be difficult and sometimes rancorous, it's a process that is fairly easily achievable except for the pain that various lawyers and professionals go to in their negotiations.

These debtors used Chapter 11 not only for that purpose but also, frankly, for almost every other purpose that Congress contemplated Chapter 11 could be used for. That's because their business, they recognized, needed fundamental restructuring. Appropriately, therefore, they developed a business plan with professional advice of very high quality.

They vetted that business plan with their constituents and began the process, a painful one, of dealing not only with their financial creditors but with their employees and other constituents that often ride through bankruptcy cases unscathed.

As I've said in other hearings, given the difficulty of that process overlaid with the very complex issues described at length in the disclosure statement regarding the relationship between General Motors and these debtors and, of course, the fundamental issue that all Chapter 11 debtors deal with which is the appropriate capital structure on emergence, this process was akin to three or four-dimensional chess. Nevertheless, the debtors had managed by August of 2007 and certainly have managed by today to achieve results in each of the categories that they originally intended to achieve. They've reached agreements with their unions. They reached a comprehensive agreement with GM. They have addressed the transformation of their business including the footprint of that business. And they have also, in a comprehensive way, addressed the claims against their estate.

I've been saying that the debtors have achieved this and obviously the debtors took the lead in that process. But it was clearly not an achievement simply by the debtors. It reflected clearly a collective effort that has evidenced, for example, a very sophisticated and responsible level of analysis

by the debtors' unions and a very sophisticated high level and responsible analysis by GM. It appears to me, although, again, the context for my remarks is a motion under Section 363(b), which is ultimately just a summary proceeding, that it also reflected a very sophisticated and responsible analysis by the two official committees which realized that in a case of this kind where, among other things, the parties need to be mindful of the requirements of Section 1113 of the Code that any coerced agreement with the unions to be approved by the Court must involve an assessment that all parties, all creditors, the debtor and anyone else affected, are treated fairly. And that the balance of equities clearly favors modification of the collective bargaining agreement. I believe that the analysis by the committees also took into account the extremely complex role that GM plays in the reorganization of these debtors in terms of a customer, a creditor and a potential source of recovery. One where GM logically would not want to make the types of agreements and concessions it would most optimally make for the benefit of the estate unless it got a comprehensive release for those types of potential claims.

And finally, as is the case with many large corporate debtors but I believe is clearly the case here, the two committees acted in a sophisticated and responsible way in recognition that the pinpoint valuation of such a set of businesses is a fantasy and that valuation ultimately in this

context, particularly given the other two points that I just made, is one that should be premised upon a negotiation based on a course economic reality but that ultimately reflects a willingness by all of the parties to live with what they believe is fair in light of the entire context.

Anyway, that was the state of play when it became clear to the debtors and to the other parties that the debtors in all likelihood would not be able to raise approximately two billion dollars of the financing upon which the Chapter 11 plan was premised. The plan itself clearly would need to be renegotiated on that basis, at least based upon the numbers that the Court heard yesterday from Mr. Butler, i.e., there was not sufficient cash in the debtors to make up that shortfall and still provide for the cash distributions to GM and the unsecured creditors that the September 6 plan contemplated. When you don't have cash and you can't raise debt, the solution is to provide equity and of course that would affect the other parties as well.

What was not clear immediately at least to the Court is whether this situation necessarily required a renegotiation of the EPCA or if it did to what extent it would need to be renegotiated. The debtors, knowing the effect of uncertainty on their reorganization process and potentially on their business -- and I should have noted previously that while the debtors have been implementing their transformation plan, they

appeared to have successfully continued to provide the types of service and products to their customers that they did pre-bankruptcy and indeed have maintained customer support and loyalty. Therefore, the debtors, knowing that basically every constituent in the case was looking for the conclusion of the case that was ripe to be achieved would be discomfited by a change of direction in that process, concluded that they should pursue not only renegotiation of the plan but in light of their assessment of the plan investors' position renegotiation of the EPCA as well although it appears to me that they kept their litigation options open. It also appears clear to me that the other parties felt that they should pursue renegotiation as well although they, too, were careful to keep their litigation options open.

To me, having reviewed the EPCA, that general approach seems to me to have been clearly correct. One can review the document and as a legal matter conclude that it was by no means a foregone conclusion that the plan investors could use the developments in the financial markets and the necessary modification of the plan as a basis for walking. And that their refusal to go forward might well constitute an anticipatory breach, go forward with a plan, i.e., that simply changed the equity percentages without materially affecting their economics. In support of such a view, one could point to the express exclusions from the material adverse affects

provision of the agreements that excluded changes in the financial markets and the markets dealing with Delphi's customers.

One could point to the language of the agreement that referred to a plan consistent with the plan attached which would include, arguably, one that was consistent with the underlying economics of the proposal as far as the plan investors were concerned, i.e., if other constituents were prepared to change their consideration without any material change to the economics of the plan investors how would the plan be inconsistent. And one could point to, as Mr. Tepper did the other day, commitments by plan funders to use their reasonable best efforts to move forward.

In addition to those legal issues, it also is clear to me, as I said before, that at the hearings on approval of the EPCA, the prospect of a substantial change in the capital markets restricting credit was not raised. I do not know whether in fact any members of the plan investor group nevertheless knew that fact or at least had made substantial bets that that in fact would happen. That is something on a nonconsensual basis that clearly would have been explored. And, of course, even if as a legal matter it would not have consequences, it would clearly have had consequences as a reputational matter if in fact it proved to be the case the plan investors had made such bets in other contexts and were

using the down turn in the financial markets as an opportunity to seek unmerited concessions on a renegotiation. On the other hand, in reviewing the agreement, as Mr. Tepper outlined in his testimony yesterday, there are various provisions that would argue that the agreement (a)could conceivably still work and therefore the debtors would be held in through its termination day; (b)that the debtors' inability to raise the exit financing and deliver the plan in the format attached to the EPCA would be the debtors' default; and ultimately (c)that the cost if there were a breach to the plan investors would be capped at a hundred million dollars. And of course, the plan investors have made no concession that they have breached anything. So that's a rather small sum in the overall context would have been the grand prize if the debtors pursued a litigation approach.

In addition, the parties, first and foremost the debtors, needed to consider their alternatives. As I noted before, it appears clear to me that even with the receipt by the creditors of stock instead of cash, a large investment by a third party would be necessary to achieve the fundamental goals that the debtors had put in place in respect of their reorganization including the GM settlement, the resolution of their pension plan issue and the other uses of cash that their business and plan requires. And given the nature of the capital markets, given the absence of any other bidder in the

original process than Highland and given the very fundamental common sense assessment that any third party would take advantage of the debtors' present condition and of course would be even more free to do so if not confronted with the legal and reputational issues that would serve to reign in the plan investors under the EPCA, it would appear that unless the debtors pursued a reasonable renegotiation of the EPCA, they would be taking a leap into the dark.

Now as far as the business judgment is concerned, although I've laid out that analysis on my own, the debtors clearly went through the proper process of reaching those conclusions. The evidence is clear to that effect. They understood the pressures they were under. I do not believe, in contrast to Lionel, they simply gave in or buckled under. They shared this analysis with their committees and their constituents as well. I should note, although it comes up in a different context, an observation in this regard by Judge Gerber in the Adelphia, which is actually quoted approvingly by Judge Kaplan, District Judge Kaplan, at 337 B.R. 475 (S.D.N.Y. 2006), where "coercion results from differences in bargaining power as a consequence of law or fact". That is aptly noted as what one calls leverage and it can't be ignored.

Consequently, to keep the EPCA alive, and it appears to me also to proceed in good faith with their DIP financing and their exit financing efforts, the debtors proposed an

amended -- or an amendment to the EPCA in November that had been agreed to, they thought, by all of the plan investors. One of those plan investors apparently chose not to agree to it, however, at least in the first instance. As Mr. Sheehan's e-mail to the board -- I believe it's Exhibit 44 -- candidly recognized, that agreement was one that the statutory committees would have a real problem with, to put it lightly, particularly the equity committee. And indeed, that's what happened. Frankly, the Court had a real problem with it also. In particular, the Court had a problem with the fact that the plan investor group wasn't able apparently to stay together even over that agreement. And frankly, because that particular plan investor, whether it's true or not, I don't know, had at the same time been touting in the media how it had been astute in recognizing the insipient credit crunch and therefore had profited from it. Not a good fact either as a legal or reputational matter for walking from an agreement for the same reason.

In any event, given the objections by almost every constituent in the case including the two fiduciary committees, I concluded notwithstanding the debtors' view that this case could not take the pressure that all of the parties, including the plan investors but all of them, should realize that I took these objections seriously and that if they could not be resolved, frankly, all the parties including the plan investors

were warned that there would be serious consequences.

I don't view that as a market test but I do view that as a reality check. In light of that, the parties went back and continued their negotiations. Those negotiations, as I said at the beginning, culminated in the December 3rd EPCA amendment, the one that's before me now, and it has led to -- or have led to the withdrawal of the objections by the two official committees with the caveat laid out on the record yesterday by the equity committee and the withdrawal of all of the other objections except the bondholder group and the bondholders' indenture trustee.

I take seriously the fact that the committees have withdrawn their objections. I understand that as no one is happy with the bankruptcy case to begin with, the change circumstances resulting from the changes in the capital markets are not a happy event to anyone. But I accept the two committees' analysis and the debtors' analysis that the December 3rd amendment is an amendment made in light of real leverage, not artificial leverage, considering all of the factors, both legal and reputational and that it is not an instance of overreaching. I do not believe and I don't believe the evidence shows this that the alternatives would result in greater maximization of value for creditors and interest holders. I do not see a viable alternative without a third party investment. There may be some dispute about how much

would be needed but clearly a large amount would be needed to make the current plan work. More importantly, the effect after the debtors have achieved what they have achieved in Chapter 11 of delaying the Chapter 11 process is -- would be serious. There would be direct costs obviously. Mr. Sheehan testified, that the direct out-of-pocket costs of the Chapter 11 case alone, in terms of professional fees, is roughly ten to twelve million a month. He also testified that the cost of another waiver could well be at least the amount of the twenty million dollars that the PBGC extracted in connection with this waiver that's in effect through February 29th.

By the way, in complimenting the other parties, the unions, GM, the committees, I should not have omitted the PBGC and the IRS in terms of their sophistication in analyzing the debtors' reorganization. In my experience, although it goes back probably too long and I'm comparing perhaps apples and oranges, but it is a very welcome level of sophistication that didn't always exist from those agencies in bankruptcy cases.

In any event, I imagine that the cost of getting other waivers or extensions would be direct and tangible. And I could assume that if one did indeed change course, took a litigation approach, sought a declaration if there had been an anticipatory breach of the EPCA, for example, it would take at least six months to be in a position to propose a Chapter 11 plan again, if that. So the direct costs to me seem roughly in

the hundred million dollar range. That's leaving aside the indirect costs that Mr. Sheehan also testified to, which are, frankly, unquantifiable but they all have to do with the notion of going out to the world and telling your customers and your constituents that we're going to have to update the business plan, resume negotiations with GM and potentially also resume negotiations with the unions setting aside the issue of trying to find a group of plan investors who would be providing better terms than the current ones. I think weighing those costs, direct and indirect, and having gone through the exercise where I believe, at least I hope, it was impressed upon the plan investors the full adverse potential consequences to them of not reaching agreement with the two committees that the present amendment before the Court properly reflects a fully informed arms length negotiation and is not an overreach.

Notwithstanding that analysis, there have been two remaining objections to the December 3 EPCA amendment. One is by the indenture trustee for the senior bonds. The indenture trustee is well represented but I say that with an appreciation that one of the aspects of representing an indenture trustee is that one needs to look out for the interests of a fiduciary whose clients don't necessarily all speak their mind. That's particularly so in today's litigious environment where indenture trustees for doing nothing even where one can argue that doing nothing is the right thing.

The other objection is by a group of senior bondholders who in their present iteration hold roughly six hundred million dollars of the senior bond issue which is substantially larger than that amount.

I have addressed already, I believe, the general good business reasons for entering into the December 3 EPCA so I won't go through those again in response to one of the objectors' objections which is that there are not good business reasons for entering into it. I will address, however -- there are other objections which I've not specifically addressed thus far.

The first is, although it really is not stated in the pleadings although there was a suggestion of it during the trial that the process by which the debtors and the committees analyzed the facts and legal issues was tainted by the fact that the current plan as frankly, I believe, any plan that would ultimately be proved in the case, but the current plan, in any event, includes in it recognition that a portion of the reorganized equity will be reserved for allocation to management on a going forward basis after emergence from bankruptcy. They also note that the company intends, as set forth in the disclosure statement, to seek approval of emergence bonuses for certain management. I believe the contention would be although, again, this was not articulated in writing, that that fact biased management in favor of

getting this process over with. I do not believe that was the case based on Mr. Sheehan's testimony and my analysis of the merits of the decision to go forward with the December 3 EPCA. I also accept Mr. Miller's testimony which is corroborated by the general record of this case that these debtors have a very active and responsible board with active independent directors and that the board has taken a lead in all phases of the debtors' analysis of a plan investment. There's no secret regarding the proposed reservation of equity to be distributed as an incentive post reorganization. And the disclosure statement certainly makes no secret of the debtors' intention to propose emergence bonuses.

The debtors' two official committees obviously don't have that problem. They don't get emergence bonuses and they've made the analysis that they have made. Even were I to conclude that there was some effect on the process, which I very clearly do not, I think that would override any such of an argument.

It's also contended by the objectors that the plan investors have impermissibly chilled the ability of the debtors to consider alternative transactions. That is based upon an agreement among the plan investors and their sources of financing to use their best efforts to proceed with the EPCA. That agreement is not a secret and, frankly, it seems to me inherent in any agreement where you have more than one party

providing financing.

It's somewhat ironic that the other objection or one of the other objections to t his amendment is that it has too much conditionality or optionality. I believe that if you did not have the type of investor lock-up that you had, you would of course have that type of conditionality here. I accept Mr. Tepper's general notion that there are plenty of other parties out there with a lot of money if they want to come to the table and that these agreements which keep these people at the table, the lock-up agreements, do not preclude those others from coming in except, of course, under the circumstances that I had previously approved contingent upon the debtors' payment of an alternative transaction fee under the circumstances where that type of fee would be earned. The evidence shows at least that the only use of a lock-up was not to keep a plan investor or source of funding from providing a better deal for the estate but rather as a threat to keep one of the plan investors from walking off the reservation to hurt the deal.

It's also contended -- and, frankly, having reread all three iterations of the ad hoc bondholder group objections, I believe it's the main focus of those objections. It certainly was the only focus of the initial objection which was, of course, to a worse amendment. That the plan upon which the EPCA is premised unfairly and it is alleged in an unconfirmable way arrogates value to a subordinated debt group.

Frankly, I don't really blame the objectors for raising this objection. It seems to me and I believe it probably seemed to them that it was their last best relatively free chance to object to a future of the plan that they don't like. That is, the treatment of the so-called TOPrS, T-O-P-R-S, bondholders holding approximately 400 million of bonds. Those bonds are subordinate to senior debt. The evidence shows that that senior debt is somewhere in the range of three to three and a half billion dollars and would include the 600 million held by the ad hoc group. If it were the case, obviously, that this EPCA, for which the debtor is paying a price in terms of fees and potential alternative transaction fee, was premised upon a plan that either was unconfirmable or, in my view, was unduly susceptible to being rejecting by voting creditors, I would understand and agree with the objectors' argument. Obviously, under those circumstances, something would have to give to render the plan likely of confirmation.

I don't think that's what the treatment of the TOPrS under this plan constitutes. As I noted earlier, this is a negotiated plan. It's premised upon important negotiations. The agreements with the unions were negotiated in a backdrop of 1113 of the Bankruptcy Code which, as I quoted earlier, requires an assessment of the fairness of the plan to all parties vis a vis the unions. It was also negotiated and is premised upon a complex agreement with GM where GM is going to

want, and anyone would want, a release from everyone at Delphi. every constituent. And finally, it is one where you have a debtor that is difficult to value.

We all know that under the Bankruptcy Code, Congress gave the ability of a senior class to waive its priority rights through a plan vote. Under these circumstances, particularly going through the analysis I'm about to go through, I believe that would be the rational businesslike choice of senior creditors here. Thankfully, according to the second circuit, my view is not a guarantee. I don't get paid enough for that. But it's my firm belief.

I went through one mathematical example of that yesterday based upon Rothschild's midpoint valuation, assuming for the moment that voters act as economic animals and will obviously test a negotiated plan value. Everyone paid a lot of money to Rothschild collectively through their fees being paid out of the estate to come to that valuation and obviously it will be tested. But the committees have their experts and they have reached their negotiated result.

So that's a good data point. And based on my analysis from yesterday, and I won't repeat it again, I believe a rational voter holding senior debt considering the recovery that he or she or its institution would get under the plan and the risks of a reduced recovery if they killed the plan would vote in favor of it. And I don't believe that's coercion. I

believe that is a recognition of all the parties' leverage under the facts of this case.

However, it was also stated to me that based upon recent short term trading values, the senior debt is trading lower than Rothschild valuation although just a few months ago it was trading substantially higher than Rothschild's midpoint valuation. I've noted that trading values are a data point for valuation but a dangerous one as evidenced, I believe, by the incredible fluctuations shown on the exhibit with which we began this trial and numerous past experiences where people bought and sold distressed debt in an environment where not only business information but also legal arbitrage plays a role in sometimes thinly traded markets. This results in instances where some people make enormous profits including when they buy from supposed fiduciaries who have great interest in maximizing value. And I'll give you one brief example which is the sale of the executive life portfolio by the insurance commissioner of California where one single element of that sale not only paid back the entire sale price but set the purchaser on the course of an enormous fortune.

Given my own experience with trading in distressed debt, therefore, I approach it with some skepticism as an accurate market reflection. However, let us presume for the moment that the true value of the distributions to senior unsecured creditors is fifty cents on the dollar. The

principal amount of the TOPrS debt is 400 million. Distribution under that presumed value would be 200 million. I am assuming that before they would agree to the third party release in the plan, which I believe is critical for the GM settlement, they would require distribution. And I believe that any of the objecting ad hoc bondholders, if they were in that position, know that they would do the same. So that 200 million dollar distribution could not all be transferred to the senior debt and have this plan be confirmable in my view. Let's assume half of it was so that three to 3.5 billion dollars senior debt in my view would be likely to get something between a hundred to two hundred million dollars although I think a hundred is a lot closer of value on the assumption of valuation that was posited to me. As I noted before, the direct cost of jettising the EPCA and taking a new approach before considering any effects on the business or any transaction risks of entering into a new transaction, in my view, is a hundred million dollars. Why would you make that trade? I don't see it.

Now the senior bondholders might say well, we wouldn't be sharing all that pain. We wouldn't be taking it all. We'd be sharing it with every other constituent. I would expect them to go to every meeting in person as opposed to asking their poor lawyer to do that if they made that demand of, say, for example, the unions, GM or trade creditors.

Now as far as the technical objection to plan confirmation, I considered that issue and I'll address it at the disclosure statement hearing. But I believe the technical objections raised as opposed to the economic analysis that I just went through are all objections that go to drafting and not treatment. The focus, I believe, should be on treatment and that's the analysis I've gone through. I do not therefore believe that this aspect of the plan is one that renders the EPCA illusory or unduly conditional. I believe it reflects in large measure rights that as a practical matter, perhaps not as a legal matter but as a practical matter, although also perhaps as a legal matter 'cause valuation is still to be determined if there's a contest over valuation, the TOPrS have just as the shareholders have. And, frankly, I saw no objection from the ad hoc bondholder group to the treatment of the shareholders.

Finally, the objectors contend that the EPCA amendment is a de facto Chapter 11 plan that should not be approved now without going through voting and all of the other steps that are required before confirmation of a Chapter 11 plan. I have previously dealt with this point in connection with the earlier iterations of the EPCA and will do so here only briefly because I believe it's the law of the case and my rationale was set forth previously. This is not the type of transaction that constitutes an impermissible sub rosa plan of reorganization. This is a building block, an important one, to

achieving a confirmed Chapter 11 plan. And without such building blocks, without such sales, without such agreements with unions, without such settlements, generally -- although the GM settlement is one that's in the plan because it does call for the release, which, I think, is the main reason it's in the plan -- most plans can't get done. That distinction was made well by Judge Gropper in In re Tower Automotive, Inc., 342 B.R. 158, aff'd 241 F.R.D. 162 (S.D.N.Y. 2006). And I don't need, I believe, to amplify on it more.

As there, here the EPCA does not direct but in fact is conditioned upon voting on a plan. I suppose those plan investors who also hold debtor securities will vote in favor of the plan. I believe there'd be serious consequences if they didn't. But that's as a matter of their agreement. No other creditor is bound in any way, directly or indirectly, by contract to vote on this plan. And as I said, they are free to go through the analysis that I just went through and reach a contrary result.

The last point that I want to address was a point raised not only by the two objectors but by the official unsecured creditors' committee. It deals with a provision of the EPCA that creates as a condition to the plan investors going forward with their investment that their be a cap of 585 million dollars on interest expense in connection with the exit financing. The committee has pointed out that it is concerned

given the volatility in the credit markets that that cap is too low. They have suggested one that is roughly forty million dollars higher. I suggested yesterday that the plan investors seriously consider increasing the size of that cap. The point made by the bondholder group indenture trustee and here by the creditors' committee is one that I believe frankly everyone in this room, including the plan investors, would agree with, which is that we do not want to go through this exercise again. And so, I had urged the plan investors to consider increasing that cap in light of that fact.

Indeed, going through this process again would be particularly onerous given that it is likely that, in one form or another, the disclosure statement will be going out shortly. Notice will be posted in publications all over the country. Hundreds of thousands of people will be voting on this plan. And the world will be perceiving that this plan is going forward premised upon an investment by the plan investors. I understood Mr. Tepper's answer to me and, frankly, though I'm not a mind reader, I don't view Mr. Tepper as particularly opposing the request I made. But it was reported to me this morning that the investor group as a whole, which apparently requires unanimity, did not agree to the request. I appreciate the difficulty that Mr. Tepper had in holding together his group and, frankly, I believe it required me to do something I normally don't do to help him keep control of the group

earlier. I have to ask myself whether the refusal to agree to that request by the creditors' committee is sufficient to override the other considerations, which are strong, in terms of going forward the proposed transaction.

In that regard, let me observe two or three things. First, I believe that the debtors do have, as stated by Mr. Resnick, some flexibility in dealing with their post reorganization interest expense. Secondly, I believe that the actual economic effect of the type of increase, if it occurs, that the committee is concerned about upon the plan investors' investment would indeed be minimal as Mr. Resnick testified. Thirdly, as I said before, when a financial institution that expects to continue to be able to negotiate transactions refuses to do so in such a highly public context where hundreds of thousands of people have relied on them acting in good faith, I believe, ultimately that if in fact the condition is exceeded in the range that Mr. Rosenberg was proposing that it would be incumbent for both legal and reputational reasons for the plan investors to respond to that situation in good faith with a reasonable concession.

I make that observation partly from my own experience as a judge. There are investors out there who have a reputation which I assume they deserve who go into every deal with a strike against them even though they have lots of cash and that's because it's perceived that at the end of the day

their handshake won't be trusted and that they won't deal in good faith as a business person would expect.

Frankly, I believe that Appaloosa's response to this whole set of circumstances doesn't put them in that category at all. I don't believe Mr. Tepper was blowing smoke at me yesterday when he said a handshake is a handshake, a deal is a deal. Given that and given that I believe all of the other plan investors want to continue to fall in the category where you don't have a strike against you whenever you come into court and say we want to bid for this company or we want to bid against those people that they will deal in good faith if in fact the debtors don't have room to manage this condition.

Consequently, I will approve the debtors' entry into the amended EPCA agreement.

The last point I should address is the debtors' request for a waiver of the ten-day stay under Bankruptcy Rule 6004. That stay was, I believe, put in place to prevent debtors and purchasers from rendering appeals moot by promptly closing after bankruptcy court approval of a transaction. That's clearly not going to happen here. The closing of this EPCA is not going to happen for a number of weeks. So I believe, particularly in light of any objection to the request, that the debtors are not here circumventing the purpose for which the Rule was enacted. Rather, they are, however, in an environment where not everyone is particularly savvy about

Bankruptcy Code processes and procedures and where it is important to them to reassure all their constituents that they are on a path to complete the process that I said they had basically completed but for the plan in September that they have what they can refer to as a final order not subject to a statutory stay. So in light of that, I will authorize the waiver of the 6004(g) stay.

I don't know if you have a current version of the order on this but since I gave what for me is unfortunately too long a ruling, I'm not sure you need much of an order other than the basic findings and a reference to the Court's bench ruling which, as I always do, I reserve the right to read over to see what I did to myself giving an oral ruling and what sometimes, not always, even the best court reporters do to what you should say. So obviously my ruling won't change but I reserve the right to correct my grammar, citation, whatever. But it seems to me that the order should be pretty simple here.

MR. BUTLER: Your Honor, I think we do have a form of order that's been circulated to the parties. It was an exhibit to the record yesterday. And we'll double check it during a break and submit it to Your Honor.

THE COURT: All right. All right. Now the other matter that's on is the disclosure statement hearing.

MR. BUTLER: Yes.

THE COURT: Do you want to move right ahead with

that? Do you have any parties to talk to about that? Or --

MR. BUTLER: I think what I'd like to do is we could just take a very brief recess of ten minutes or so and try to get set up --

THE COURT: All right. I'll be back at 12.

MR. BUTLER: Thank you.

(Recess from 11:52 a.m. until 12:26 p.m.)

THE COURT: All right. We're back on the record in Delphi Corporation. We're up to the disclosure statement and related solicitation procedures matters.

MR. BUTLER: Your Honor, with respect to the omnibus agenda -- non-omnibus agenda we filed for the hearing that began yesterday and continuing today, this is item number 3 on that agenda. The solicitation procedures motion concludes the relief seeking and approving the disclosure statement. It's filed at docket number 9266.

Your Honor, the debtors propose to give sort of a summary where we think we are from the debtors' perspective. And then seeing as the disclosure statement hearings are often times largely, among other things, drafting sessions, we work out language with the Court and language of the parties. With the Court's permission I was going to ask if the parties could use the mikes at the tables.

THE COURT: Yeah, that's fine.

MR. BUTLER: So as not to have to jump up and down.

THE COURT: That's fine.

MR. BUTLER: As we go through.

THE COURT: You could sit there if you want, if you're going to be speaking.

MR. BUTLER: So, Your Honor, just as we begin this second day of the disclosure statement hearing, this relates to the original plan filed at docket number 9263, and the disclosure statement filed at docket number 9264. The disclosure statement hearing in these cases commenced on October 3rd at which time Your Honor resolved a number of objections that were then pending, by an order entered on October 9th, at docket number 10497. As we indicated at that hearing, what the debtors intended to do is not file a subsequent or iterative plans and disclosure statements but rather to file, as we worked through them, a series of potential amendments. So we could get to this continuation of the hearing and assuming that we can obtain Your Honor's endorsement of a form of disclosure statement to go out, we will in connection with that, and we submit the final form of the solicitation order. The debtors will file formally a first amended plan, executed by the debtors and a first amended disclosure statement, executed by the debtors in a form that this Court is prepared to have solicited.

So everything up to this point of time has been a series of amendments. We have made three of them formally so

far. As we've moved through the hearing we filed a series of amendments to the Plan of disclosure statement on October 29, 2007, at docket number 10759. We filed further amendments to the disclosure statement, a appendices on November 14th, at docket number 10932, and conforming amendments to the disclosure statement on November 16th at docket number 10964. And we filed a third round on December 3, 2007 at docket number 11220. It certainly not a mistake that these were filed at around the time and in connection with updating the GM settlements and the investment agreement amendments because the consent of both of those parties is required for these filings.

THE COURT: Okay. I have -- the one I've been working off of is dated December 6th.

MR. BUTLER: Correct. I'm going to walk through that to the -- walk through that. And that is -- those are the amendments that we filed. And then on December 5th we filed, in connection with our reply; we filed a series of additional amendments at dockets number 11291 and 11295. And that included in that notice of filing, it included what the Court wanted to do, which was a cumulative blackline back to September 6th of the Plan and disclosure statement, and that is dated, I believe, December 6th, in terms of the actual document that's before the Court.

THE COURT: Okay.

MR. BUTLER: And it's that document that we propose

be the working draft, which I presumed the Court looked at as we move forward. But that's the history of the filings the company has made -- the debtors have made in connection with these matters. As a result of that there have been a series of objections that have been filed at various times here. And just to sort of summarize those objections before the Court today, I'm not going to summarize the statements, but the objectors before the Court today include Cheryl Carter, at docket number 10792. This is essentially a similar objection, I won't say a duplicate objection, but it's a similar objection that she lodged prior to the September -- the September 28th disclosure statement objection deadlines, which Your Honor overruled on the October 3rd disclosure statement hearing. This was a letter she sent to the Court on October 23, 2007.

There are -- and then in terms of the remaining --

THE COURT: Could I -- let's -- given everything that has to be done today -- is Ms. Carter here by any chance? No. It may get lost in the shuffle. I reviewed it. You're right, it is essentially of what was filed before. As I read it it basically opposes the idea of Delphi being in bankruptcy and for the same reasons that I overruled it before I would overrule it now.

MR. BUTLER: Thank you, Your Honor. Your Honor, also just procedurally so we can it someplace, the equity committee did file a motion to continue the disclosure statement hearing

at docket number 10795, and that is not a motion that they're pursuing at this time. I want you just to confirm.

MR. JOSEPH: That's correct, Your Honor.

THE COURT: Okay.

MR. BUTLER: Your Honor, I think that means that the balance of objections have been filed by -- and there have been objections filed, some of which I think, may have been withdrawn, but we'll work through them. The equity committee has filed a series of objections at docket 10802, and at docket 11028. They still may have particular comments to the disclosure statement. I think the balance of those objections are not being pursued by they may certainly have some comments as we walk through the day today.

Similarly, the creditors' committee filed a series of objections at docket 10804, at docket 11034. I also believe it to be the case that the creditors' committee is not pursing those objections as stated but may also have comments to -- as matters are considered by the Court during the hearing today.

MR. ROSENBERG: That is correct, Your Honor.

THE COURT: Okay.

MR. BUTLER: So the -- I also wanted to address the objection filed by Law Debenture Trust Company at docket number 11017. My understanding is that they are not present in Court today and intending to pursue that objection, but I need to confirm that here on the record this morning.

THE COURT: Okay. I'm sorry; they're the indentured trustee for the TOPrS?

MR. BUTLER: TOPrS, yes.

THE COURT: Okay. All right. Well, no one is standing up; I take it that they're not pursuing their objection.

MR. BUTLER: I think, Your Honor, what that boils down to -- I should also address the ad hoc trade committee objection at docket number 11049. Similarly based on the settlement that was announced on the record yesterday, I understand the ad hoc trade committee is not here to pursue that objection.

THE COURT: Okay. That, I think, Your Honor, brings us back to the same -- with one addition, the basic same players we had with respect to the EPCA. There are objections filed by Wilmington Trust, at docket number 10810. And again, at docket number 11048. And there are objections filed -- a series of objections filed by the ad hoc -- I call them bondholders group or committee, the composition of which seems to swing from time to time and even from objection to objection in terms of which parties are joining in. But those -- their were, I think three objections filed one, at docket 10803, one at docket 11005, and then there was a third supplemental objection that was filed in connection on December 5th, came in and we reviewed it, and we'll talk more about it, we may

actually move to strike under the sense there's not a single thing raised in that objection that's based on anything that was filed supplementally. It seemed to be filed in order to -- from the debtors' perspective bootstrap Everest Capital Limited and Northeast Investors Trust into the group of objectors. Because there's nothing -- in fact, they basically concede in paragraph 2 of the objection that none of the issues are addressed by the most recent amendments to the disclosure statement. So they're still unhappy, and I understand that, but I don't think there's anything new in that third supplemental objection.

So we've got the ad hoc, bondholders group, Wilmington Trust, and there was -- there were two objection, protective objections filed by the lead plaintiffs at docket number 10794, and at dockets 11022. I think we've addressed substantially all of their issues. I don't know whether Mr. Etkins intends to pursue anything further at this hearing but he's I think here in the courtroom today.

MR. ETKINS: Your Honor, just a couple of issues remain outstand.

THE COURT: Okay. And you're reserving your rights in case someone wants to change what you've agreed to.

MR. ETKINS: I'm sorry?

THE COURT: Like Mr. Rosenberg and the equity committee, you're reserving your rights to talk if someone

proposes changing language that you've agreed to.

MR. ETKINS: Oh, surely, Your Honor.

THE COURT: Okay.

MR. ETKINS: There's just a couple of issues that remain outstanding and we have not been able come to agreement.

THE COURT: All right.

MR. BUTLER: And, Your Honor, in addition to the people who are regularly before you, I'd like to introduce the Court to Gordon H. Stuart. Mr. Stuart one of our colleagues who has been the principal draft person of the Plan and disclosure statement and is, you know, responsible -- I know there are things people want to work on today, really I think he's done a really good job of -- in a very difficult situation. He's here at counsels table and we're going to ask him to sort of be the principal scribe of trying to take down Your Honor's directions and of other people's so we can turn this.

I will point out hopefully that we can resolve matters today, in order to be able to maintain an emergence timeline that would allow us to actually emerge in the middle of the first quarter of 2008, we're shooting for the -- Your Honor, if I should comment, you asked us to file a timeline, we did file a timeline with dates and times on it, and we'll talk about those in particular, but we're shooting to emerge, if we can, towards the end of February, prior to the PBGC waivers

expiring. Although, we've publicly stated that our goal is to emerge by the end of the first quarter. In order to do that we need to commence solicitation the week of December 15th, and in fact, very close to December 15th. And in order to accomplish that we will need to ask Your Honor to consider entering disclosure statement approval order sort of not later than Monday, which means we're assuming that we're going to get a number of instructions today which we'll have to process over the weekend and submit a package back to the Court which we'll work over the weekend to do. But our goal, if the Court's inclined to -- inclined towards that time, our goal would be to actually have an order entered in -- as early in the day on Monday as the Court is reasonably prepared to consider it, in order to get things to printers and the other folks who have to help us. I do have a specimen with me. You know, we're nothing if not optimistic, as debtors-in-possession. We are as you know in our solicitation motion going to use some technology in trying to cut the cost of solicitation here, so I have a -- I actually have the proof of the CD rom in which all these materials hopefully we'll be able to go as its distributed out. The solicitation package will go out to -- as Your Honor, has observed, many hundreds of thousands of people, as we move forward to solicit under this proposed disclosure statement and Plan.

Your Honor, that's just a backdrop of where we are in

terms of presenting it. I think I would like to briefly introduce, if we can, the exhibits, which I think there are no objections. The disclosure statement has the record before it. There is no testimony today in connection with this. There are both -- there are primarily legal objections and then requests to, I think, more or less -- I just need to get Your Honor's comments, which we anticipate from a prior history. But also as typically in these matters the Court acts in some respects as a referee on these last groups of comments that we need to work through. The evidentiary record here in terms of these exhibits is really just a paper. We want to make sure that the disclosure statement has in place.

Your Honor's previously admitted Exhibits 1 through 20, which mostly were primarily related to notice. And there are a total set of exhibits here of, I believe, a total of eighty-one exhibits. The first twenty were previously admitted. And those were four volumes of exhibits dealing with notice of over 550,000 parties. And then we have the remaining exhibits, primarily are scheduling orders, proposed amendments to the Plan that have been filed, affidavits; notices of service with respect to those matters, and the various objections and motions and drafting that the company has done. So I think there is no -- my understanding is there's no objection to admission of Exhibits 1 through 81 in connection with this hearing.

THE COURT: Okay.

MR. BUTLER: This just creates the record.

THE COURT: Well, except for the affidavits of service, it's basically matters of record anyway, but this puts it in one record for this particular motion. So that's fine. They'll be admitted.

(Debtors' Exhibits 1 through 81, various documents relating to this hearing, were hereby received into evidence, as of this date.)

MR. BUTLER: In terms of proceeding with the hearing, Your Honor, I'd just ask the Court how you would like to proceed. There are -- I think the parties that have specific requests, both legal and drafting. And I did, by the way, I apologize to counsel for Highland Capital that wasn't on my list. Highland Capital also filed an objection for this -- with respect to this matter. And they have a proposed language they want to add to the disclosure statement that the debtors do not support.

THE COURT: Okay.

MR. BUTLER: So we'll have to deal with that issue. And I apologize for not having mentioned their name as well.

THE COURT: Well, I think probably what's most efficient is for me to give you my comments, which are just that, my comments. And they are somewhat informed by the objections, but not entirely. And I know that in a couple of

places there will be the need to discuss a so-called plan objection and that's really dealing with the Plan's treatment of the senior debt and the TOPrS. And what I'm going to ask the parties on that point to do is listen to my comments and then don't jump in immediately because there are some comments up front that arguably you might want to jump in on this point. But rather, there's a specific point where the disclosure statement talks about confirmation -- particular confirmation objections and I just think that's the best point to address the issue. And I appreciate its not a disclosure issue as much as a plan issue and I'm going to treat it that way. So let me just go through my comments.

As I always do with disclosure statements I have some comments that are just -- it's not worth spending the time to talk about. I mean, for example, you say that on page Roman numerical IV of the Plan, the Bankruptcy Code allows the debtor to sponsor a plan of reorganization, and I just changed that to propose, because I think that's clearer to people. But if there are things like that I'm not going to -- I'm just going to give you my mark-up on that.

MR. BUTLER: Terrific, Your Honor, okay.

THE COURT: Okay. Most of my comments are in the summary, and that reflects my experience that that's what people read. And so I'm going to go through that with you all, and again, I'll give you the market.

If you go to Roman numeral IX, page DS Roman numeral IX, and I'm working off the blackline, or actually the bluelined version from December 6th. Okay. If you look in G, events impacting reorganization, the second sentence there says -- the third sentence, excuse me, it says, "Although the currency received by certain stakeholders has changed since the debtors initially filed the September 6th plan." And then I have added here, "in light of the debtors' inability to borrow as much as exit financing as they had originally intended," and then it continues. "The Plan continues to provide for full recoveries for unsecured creditors at" and then I've added "a negotiated" and then it goes on "Plan" and I put in the word "enterprise value" "in fair consideration for holders of existing common stock and is supported by GM, the plan investors and," and here, again, since I think a lot of people just read the summary I've deleted the phrase "statutory committees" and put in "both the official creditors' committee and the official equity committee" which you also have as defined terms.

What I suggest for those who have objections is after I go through all this you can come back and say how you think this doesn't work, and that goes for the debtors too.

If you go to 13, it says, "Certain creditors and stakeholders do not agree with the debtors' assessment of event risks."

MR. BUTLER: I'm sorry, 13?

THE COURT: I'm sorry, Roman numeral XIII, excuse me.

MR. BUTLER: Right. And our page number pagination is slightly off here, I think, of the summary.

THE COURT: Well, this is right above H, summary of first amended plan.

MR. BUTLER: Yes, thank you.

THE COURT: Okay. So it says "certain creditors and stakeholders do not agree with" and I've said "certain creditors and stakeholders have stated that they do not agree with." And then the next sentence says "the debtors however believe that each event described above could have a significant impact on the debtors' ability to successfully reorganize." And then I've added "if the Plan is not accepted and confirmed." So it says here "could impact on the debtors' ability to successfully reorganize if the Plan is not accepted and confirmed. And that the absence of acceptance and confirmation would at a minimum create substantial uncertainty about the direction of the debtors' reorganization efforts, in addition to materially increasing the cost of the debtors' Chapter 11 cases."

Now, I know that there were certain objections as to the event risk timeline. I did not believe that statements regarding the likelihood or lack of likelihood of getting waivers or agreements should be in here. But to the extent

something has been superseded by a new agreement, I think you should take out whatever event has now been superseded by a new agreement.

MR. BUTLER: We'll present Mr. Fox with a revised event risk timeline. At least just to the boxes I think we're in agreement -- I think we're in agreement on the boxes now. I'm talking about the language.

MR. FOX: There might be one or two.

THE COURT: All right.

MR. FOX: But otherwise I think we're better than before.

THE COURT: All right. Okay. Now, I guess the other thing that we should do here is I guess you should put in F on the top of Roman numeral XI, I didn't put this in, but in light of this morning's ruling I think you should put in that the Court has approved the amendment to the EPCA, in the section dealing with plan investor and exit financing.

I'm not at all of the view necessarily that there should be some footnote here about Highland.

MR. BUTLER: All right.

THE COURT: You have a lengthier discussion later about the EPCA.

MR. BUTLER: Yes.

THE COURT: Then you should update that in light of today's ruling.

MR. BUTLER: We'll do that.

THE COURT: I think you should say there that the debtor, under appropriate circumstances, will continue to consider alternatives from third parties. And as received an expression of interest from Highland Capital.

MR. BUTLER: In fact, Your Honor, the debtors haven't received it the creditors' committee has receives something.

THE COURT: I would not that then. Just that it's been made.

MR. BUTLER: Right.

THE COURT: I thought about putting it here but given that it's still an expression of interest in that state I -- the most you put in here, if you're going to put in anything was that the debtor nevertheless is prepared to consider other alternatives. But I think its more appropriate in a lengthier discussion of the ECPA that appears later. So I don't think it would be the update here.

All right. On page Roman numeral XIV, that first full paragraph says "the Plan is the culmination of Delphi's transformation plan, within the Chapter 11 context. Delphi has determined that it has achieved those aspects of it's transformation plan for which the Chapter 11 reorganization process was necessary." And then I would add this phrase, "in that it is now time to emerge from Chapter 11 to fully implement it."

Then if you go to the next paragraph before the last sentence of that paragraph. The prior sentence ends with a "par plus accrued recovery at plan value." You see that?

MR. BUTLER: Yes.

THE COURT: I have put in this language and I have added language about the importance of a vote in a number of place, because I believe that the vote is important here as a legal matter on some of the issues that the Plan resolves. And I want to make sure people know that. So I've added this language. "As discussed below, this Plan value, was negotiated to enable the various settlements upon which the Plan is based. People may differ about the exact valuation of an enterprise like the debtors. The debtors believe that the negotiated Plan value is a reasonable basis for the Plan and the settlements embodied in it. Although the Plan was negotiated with the statutory committees, GM and other parties, your vote on it is extremely important. Your vote will help to determine whether the Court confirms and approves the Plan and the settlements in it, including the following: Involving certain subordinated bonds, GM, and multi-district securities litigation." And then you pick up, and you might want to insert a new paragraph here, because this starts about the TOPrS. And it says "in satisfaction of the subordination provisions." I would say "in recognition of and to satisfy the subordination provisions."

And then if you go to the next page 15, Roman numeral

XV, under the heading number 2, valuation. The third line you have a quote "par plus accrued" recovery. I would just use the same phrase you've been using which is "par plus accrued recovery of plan value."

MR. BUTLER: Your Honor, I know you don't want to hear comments back, but just to say, on that particular phrase would it make sense then for us to word search the document and use that phrase globally?

THE COURT: Well, I think you use it -- well, maybe you don't.

MR. BUTLER: I can double check it.

THE COURT: Yeah, that's fine. On the next page Roman XVI, the carryover paragraph that ends with the phrase "estimated total enterprise value," I know you say this in a couple of places but I think it's important to emphasize. I'd add this sentence, "The actual common trading value of the shares of the reorganized debtors may be higher or lower than the 5961 plan equity value."

THE COURT: I have not put in here anything more than what you have in this chart, which has a percentage recovery based on Rothschild's valuation. I think that's sufficient. But I just don't -- I don't think I missed anything on that. But I do have a point later about these percentages.

And then on XVII, again, I put in here again, where you state "certain creditors believed that the plan equity

value may be" I just put "have stated that they believe." Just that sort of a consistent change. And you'll see that in the mark-up.

Okay. If you go to the next page Roman XVIII, under the heading rights offering. The third sentence after the dollar figure I've added -- and I think this should be put in bold. "This right constitutes a substantial percentage of the potential recovery by such creditors under the Plan, but it is realizable only if properly exercised or sold." Again, we're talking about the discount rights here. And then the next paragraph that talks about that in more detail I think also should be put in bold. "Please note that" --

MR. BUTLER: That entire paragraph?

THE COURT: Yeah. And then before the last sentence of that paragraph I would add "even if you don't have the cash to exercise your discount rights you may be able to sell them. The actual sale price may be higher or lower than the discount to plan value."

And then if you go to the bottom of that page with the paragraph that begins "current stockholders of Delphi may receive but do not desire to exercise may sell their shares," I'd put that in bold too, that whole paragraph.

MR. BUTLER: That whole paragraph?

THE COURT: Yeah. Okay. On the next page Roman IXX, I hate to waste time on this but it's not a big point I guess.

At the beginning it says "although the debtors need only establish that the stakeholders will receive at least as much as under," I'd say after the word establish "under Section 1129(a)(7) of the Bankruptcy Code." You'll probably have to, you will have to establish other things besides that.

Now, in each of the list of confirmation -- potential confirmation objections on this page I've substituted for the word "believe," where it says "certain creditors believe" I've put in the word "claim."

Now, I guess this is the part where I thought we would talk about the classification and 1123(a)(4) issue on the TOPrS. Before we get to that, though, I want to alert you to an issue that I have previously flagged in disclosure statements. And I generally, as you can tell, believe that most Plan issues should be reserved for a vote. Because people have the ability to amend their rights as a class. But I am generally uncomfortable with that Plan provision that creates a disputed claims reserve which can be interest earning, that doesn't provide interest ultimately actually earned in that reserve to the claimant if their claim is allowed. I just have -- I've always had a problem with that.

MR. BUTLER: I'm just trying to understand the issue. The disputed claim reserve earned interest, you'd expect the interest to go to the claimant. I understand that.

THE COURT: On a pro rata basis.

MR. BUTLER: But in this case the disputed claim reserve is going to have equity in it. I think. I don't --

THE COURT: Well --

MR. BUTLER: I don't think there's any cash in the reserve.

THE COURT: But is there any fluctuation of that or you just get the equity you're entitled to?

MR. BUTLER: No. The equity that's associated with that, we're not marking the -- all of the shares have been determined -- I mean, what --

THE COURT: No one's going to be selling the equity.

MR. BUTLER: Right.

THE COURT: It's just going to stay as equity.

MR. BUTLER: Exactly, Your Honor. You see, what's going to happen is once we run the rights offering, in the period between the rights -- there will be confirmation. Once we run the rights offering there has to be a summon up involving the committees and the plan investors. We have to make sure we got all the share counts correct. And as we set the -- what goes in at what place at closing. But that's why -- that's why the Plan investors have taken great effort and the company has working with the committees to express things in share counts, because the share count issue is relevant.

THE COURT: Okay. Maybe you should say that then,

"Here disputed unsecured claims will be receiving the equity that they would be entitled to."

MR. BUTLER: All right.

THE COURT: On this point. Okay. Now, let's focus on the TOPrS for a second. I read the parties' submissions on the classification in 1129(a)(4) points, although they mostly focus on classification. And actually this goes back to a question that I posed to Mr. Lauria yesterday. And maybe I have the answer for it. As I read the disclosure statement, the disclosure statement in all caps at one point reserves the right to move people to other classes and -- notwithstanding their vote, their counted in the class that their ultimately allowed in. I'm not focusing now on the treatment of the TOPrS' claims, that's an issue that people can vote on as I said this morning, but rather whether any particular one creditor, for whatever reason, wants to object to the Plan, could defeat the Plan by contending that it violates 1122's classification scheme or 1123(a)(4). I believe, generally, that -- and I think Colliers takes this view, and certainly cases that the debtors have cited take this view, that you can, under the right circumstances, classify sub-debt and other unsecured claims together. However, there is a concern, which Colliers expresses, and it's a legitimate concern that the vote of the sub-debt holders shouldn't be able to carry the class, since it's the votes of the seniors waving the subordination or

waving it to the extent that its not satisfied, that really carries the day. So it seemed to me, but I want to -- this is important, to know that when you get the votes you can segregate out who the TOPrS are and who the other are.

MR. BUTLER: Your Honor, actually on that point, I think I mentioned this to Mr. Brilliant earlier, we're actually tabulating -- or maybe to Mr. Rosenberg, someone I spoke to before the hearing. We're actually tabulating -- we'll have the ability to tabulate all of the people who vote by the kind of claim they have. That's also going to be true, I'm told, I will double check, you'll correct me if I'm wrong, but I think we're also able to do that by the debtor against which they have filed the claims. So that we will have available --

THE COURT: That anticipated another question I was going to --

MR. BUTLER: From a data set perspective we will have available to us the ability to slice and dice the data and the voting report and preserve the issues that may be objected to at the confirmation -- before the confirmation hearing with the debtors obviously full reservation of rights of saying we think we've done it right and we want to be able to prove that, but we will have all that data.

THE COURT: Now, it seems to me there is a remaining concern that the fact that they are in one class I guess arguably would somehow disillusion the seniors from voting

because they feel that maybe they might be outvoted. But I can tell you one of the reasons that I placed, in a number of places, including in the section that discusses the TOPrS, that your vote is important, is to emphasize to people that their vote is important and that they really need to vote. So I'm not talking about the 1123(a)(4) issue yet.

MR. BUTLER: Okay.

THE COURT: I'm just talking about the 1122 classification issue.

MR. BRILLIANT: Your Honor, I think they see it as three different, you know, issues that are all combined. It's a 510(a) issue on the intercreditor as well as the --

THE COURT: But that one I -- that's not -- that's something that people really can't vote against. I mean, they can change their treatment under the Plan.

MR. BRILLIANT: They can vote to change their treatment. But in order to vote to change your treatment you'd have to be in the right class to do that. So I see that three issues -- you know, inter-delineated here, the 1123(a)(4) issue with respect to the treatment of the TOPrS, the classification claim, and the 510 issue, they're all tied up in my mind in putting people in the right class so that the debtors can accomplish, assuming they get the affirmative vote, what they want to accomplish, which is to get the seniors to waive the subordination --

THE COURT: Well, let's just say that the debtors get a vote since they can keep track, and intend to keep track, of each vote by terms of the security owned or the claim, in case of trade claims. And it's a class vote where not only do a requisite percentage of the TOPrS vote in favor but also a record percentage of everybody else. It seems to me, at that point, to be a moot issue.

MR. BRILLIANT: Your Honor, it may very well be, but I think the issue is an issue of disclosure. Which, at this point in time, which is somebody who -- a senior creditor needs to be told how he -- how can --

THE COURT: Oh, I understand.

MR. BRILLIANT: -- possibly waive his seniority.

THE COURT: And we haven't gotten to it yet, but I have a lot of language on that point. That your vote is important because if seniors don't waive these rights you may have done something one way or another that will affect your treatment.

MR. BRILLIANT: I think that's the important thing, Your Honor.

THE COURT: All right.

MR. BRILLIANT: And I don't know where you're going and if Your Honor wants I'd be happy to wait. But --

THE COURT: Yeah, wait for the language then. It just seems to me that with that language, if in fact, it does

become an issue, if in fact the senior portion of this class votes no, and the junior portion of it votes yes, or would carry the class, then I think that one solution would be to simply put them -- the seniors, recognizing that they voted no. And your rights are preserved to say they voted no.

MR. BRILLIANT: Your Honor, I don't know where you're coming from on this, and I'm happy to wait, I do know what Collier says and I have read the cases the debtors cited and I don't believe that in a context of waiving seniority that -- you know, that those cases are applicable, you know, in a classification. And, you know, I do think that it would be --

THE COURT: Okay. We'll disagree about that one but --

MR. BRILLIANT: Well, maybe that we do, Your Honor, but --

THE COURT: Okay.

MR. BRILLIANT: -- you know, at some point I would like to be heard on the legal issues whenever it is that Your Honor thinks it appropriate.

THE COURT: Well, but it's not a legal issue. I mean, that's why I'm raising it now. It seems to me if you can -- if you know who's voting then the debtor can either fix it or not, if you're right.

MR. BRILLIANT: Then I think we do get to an issue, and again, it may be that the language you're going to add is

going to --

THE COURT: Well, yeah. No, I understand that's important. You've got to make people know that their votes important and why.

MR. BRILLIANT: And how their votes are going to be counted and how the debtors are going to consider their votes. and if they don't like the Plan how it will be considered and --

THE COURT: Okay.

MR. BRILLIANT: -- and how the Plan can be confirmed over their vote. All that needs to be disclosed.

THE COURT: Well, we'll get to that language but I understand that. The other issue I want to raise is the 1123(a)(4) issues, which is the different treatment issue.

It seems to me that as a technical matter someone would have a pretty good objection, as a technical matter, to this Plan. And even if the class -- the senior class -- the senior group of this class voted yes, an individual creditor could argue pretty cogently that the treatment under this Plan is not simply implementing the subordination rights. On the other hand -- and therefore would be different treatment. If it was simply implementing the subordination rights, you could say this class gets what they're entitled to get as an unsecured creditor and then we are effectuating, as a mechanical matter, the subordination. But I don't think this

really does that because you're not -- you're specifying a certain specific recovery as opposed --

MR. BUTLER: I'm sorry, specific what?

THE COURT: Recovery for the TOPrS. Wait, let me finish. Ultimately, it seems to me, however, to be an academic issue. Because it seems to me that if someone does object on that basis just to be a pain in the neck then you move it -- the same treatment, but you create a new class under 1127. And it seems to me to be a non-material modification. All you're doing is rectifying the different treatment by putting them in a different class. The different treatment point.

MR. BUTLER: Two comments. That's one of the reasons we retained the right that you talked about in terms of making those adjustments and disclosing it in the Plan. Second of all, the fact is, and one of the things we'll deal with at confirmation which is why I really want to lineate Mr. Brilliant's issues at confirmation not here after we know how the votes go, among other things, and that is that, you know, there are two or three different bases in which the company will approach confirmation of this Plan. The leading one is going to the fact that this is a settlement case. And the fact of the matter is that their was -- the company's view is that there was a negotiated amount of value, negotiated by the creditors' committee, that basically said senior creditors were going to get par plus accrued at a negotiated plan value. And

that we were going to put enough in that class, allocate enough value to that class, that there's a certain amount of value that went to that class, it was enough to pay -- it was enough to pay par plus accrued of plan value to the senior creditors and the residual value that went to that class went to the TOPrS. It turns out that that residual value is ninety percent of par --

THE COURT: No, I know. You're reserving your right to do a -- the satisfied in full analysis --

MR. BUTLER: Satisfied in full analysis of the value.

THE COURT: -- not in planned value in true, you know, investment banker testimony value. But I did want to get on the record my believe that it seemed to me that it was not unduly risky to go out with such an approach. Because at the end of the day there's, as mechanical matter, you have the ability and you told people under the Plan, this could happen. You can simply create a new class and give them exactly the same treatment. And therefore, you'd get around the disparate treatment.

MR. BUTLER: Correct. Which we've disclosed.

THE COURT: Okay. We'll get to the description of why your votes important later on when we're talking about the TOPrS.

MR. FOX: Your Honor, the point about them both being important, it may be useful ideally from my perspective, that

subclasses would be better than the single class for the idea of moving them later. But putting that aside, if it -- on the perception issue and the issue you're talking about, it would probably be helpful to indicate how the votes will be recorded --

THE COURT: Yeah, I agree.

MR. FOX: -- as well. So that not only saying your votes important but that the Court will be told --

THE COURT: I agree.

MR. FOX: -- how the seniors and how the subs are.

THE COURT: All right. And then again, that's in the later discussion on the TOPrS.

MR. LAURIA: Your Honor -- by the way, Tom Lauria for Appaloosa. If it's helpful, this is not an issue that we would assert it is a breach of the EPCA --

THE COURT: Okay.

MR. LAURIE: -- because it's in the Plan we already agreed to.

THE COURT: Right. And I should have known that because I've just been reading it but I forgot about it. So you're right. Okay. In fact, there's an intro discussion, at this point, on the next page.

MR. FOX: Which page is that?

THE COURT: Roman numeral XX. Okay. I would add a bullet to the -- at the end of -- or not a new bullet just a

new paragraph, at the end of this list of bullet points on Plan objections. And it would say, "the merit of such objections to the Plan's confirmation may depend on the vote on the Plan. For example, as discussed in more detail below, a senior class may vote under the Bankruptcy Code to permit a distribution to a junior class or a group of creditors, even if the senior class is not necessarily paid in full. A senior class may do this, for example, believing that such a compromise is preferable to a litigation alternative or further delay or to preserve a settlement, such as the GM settlement. Thus, your vote on the Plan, and it's proposed compromises, is important. The Court will be apprised of the vote of creditors senior to the TOPrS, for example."

MR. BUTLER: And, Your Honor, just note, I was hoping you were actually reading that, because we couldn't get it all down, that there's a -- there will be a rider that we'll be able to get from you on that.

THE COURT: Although, my writing kind of sounds like I just said it. It looks like I just said it, excuse me. Okay.

Going to page 23. In the new language that was added on the TOPrS, in the second line of that, where there's a parenthetical that says "except for holders of TOPrS claims who," and I would add "in satisfaction of their contractual subordination," and then continue on. And then I have two

notes here. The first one appears in the summaries each time you make a reference to the discount rights offering on these summary pages that go on for the next two or three pages. And it says, "see page blank or section blank," whichever is easier for you to do, "for the need to act promptly to take advantage of the discount rights." And then I believe you also should -- well, this is the question I have, I think it comes up here first, yeah. This was raised by some of the objections. The estimated percentage recovery here is a hundred percent, and it's clear that it's on the Plan value. I guess the question is is this on a fully diluted basis, does this take into account the reserve for the management -- you know, is it on a fully diluted basis? I guess that's my question.

MR. BUTLER: The answer I believe and I'll ask Ms. Shaw, this does not include the eight percent of management comp which is --

THE COURT: Which is across the board, it dilutes everyone.

MR. BUTLER: It's across everyone and it's going out over time. That --

THE COURT: Okay.

MR. BUTLER: -- whole package isn't being awarded in emergence.

THE COURT: Well, I think you should -- you can make a note to that affect that that -- that it doesn't include that

which is across the board on all equity, including the Plan investors, and is allocable over time by the board.

MR. BUTLER: Where do you want me to put that. I don't want to put in everyone of these boxes. I mean, is that --

THE COURT: Yeah. I would put it in the discussion, the fuller discussion of the unsecured's treatment when we get to that. And then my note to myself was whether there should, however, be a note here on the variation on recovery based on exceeding the allowed claims threshold, which some of the objections go to. My inclination is that that should be here, particularly since you have a reference to estimated amount of allowed claims.

MR. BUTLER: We can --

THE COURT: Just a footnote, saying the Plan investment agreement provides that if the estimated allowed claims are in excess --

MR. BUTLER: You're talking about the anti-dilution provision in the EPCA?

THE COURT: Yes, the anti-dilution, yeah.

MR. BUTLER: Got it. We can do that.

MR. FOX: Your Honor, can I just raise a question about the dilution question that you raised? I think the question about the dilution in part is whether the outstanding shares, which are in the chart on page 16, are net of the stock

being held out or not. In other words, if the stock is being satisfied today there's actually -- we're talking about a finite amount then the percentage that may be doled out later as being set aside now. Or -- I mean, it's treasury shares, I understand, but still I think that may make some difference. That was part of the confusion.

MR. BUTLER: Can I have a moment, Your Honor?

THE COURT: Okay.

MR. BUTLER: Your Honor, two points in this. One, the numbers come down from ten percent to eight percent, as part of the negotiations, we didn't say much about it in the EPCA hearing, but the numbers come down. Number two, what is normally done in these situations is it consists of authorized -- we calculate it on the authorized but not issued --

THE COURT: Right.

MR. BUTLER: -- section of the stock. There will be presumably at confirmation, or shortly -- or at -- and affected shortly thereafter certain equity awards that will be issued to management if the Plan's approved and we get to the confirmation on all those matters. That's something south of -- I think south of three percent, we haven't done -- finished the calculation yet and it depends on what happens at the hearings. But that -- that -- and, you know, so we're talking about I think a relatively de minimis amount.

THE COURT: I don't think that's what Mr. Fox is

going. I think he wants to make sure that you haven't allocated in the Plan a specific number of shares to go to the unsecured creditors, right? It's a percentage?

MR. BUTLER: No, it's a share count. At the end of the day -- I mean, he knows it because he's part of the creditors' committee. I mean, all of these have been translated into -- all of these issues have been translated into shares. Because that's been concluded in the EPCA, how many shares they get, there's a share allocation table for everything.

MR. FOX: No, the answer on -- that it's outstanding versus authorized resolved my question on that point.

THE COURT: All right. Okay.

MR. FOX: What -- the other question on this point though, with respect to the range of claims, is whether people can get a hundred percent regardless if you're at one end of the range or the other. So that's a -- that's a different issue but the same question.

I mean, if the -- aside from printing more stock, which doesn't provide more value, if the claims come in at 3.2 billion that's going to make a difference then if they come in at 3.6 billion. So, there presumably then is a range of recovery unless there's some other explanation.

MR. BUTLER: Well, I think --

THE COURT: Well, they say later that they're --

they're -- they're dollar number is down pretty low at this point. I mean, your range of claims that are in dispute -- is it still this number? Is it still a 430 million dollar number?

MR. BUTLER: I don't have the claims folks in here. I think it is accurate.

THE COURT: Okay.

MR. FOX: If you're -- if you're a hundred percent if the claims are at 3.69 billion then we don't have to have the conversation. Otherwise there is a question there.

MR. BUTLER: I think the -- the --

THE COURT: I mean is this --

MR. BUTLER: First off, I mean, and we disagree on what disclosure we want to make. I make two observations. One, I actually don't think, in fact, but that doesn't mean we don't need to disclose something, in fact we're going to have this cap problem. I think we're going to get in where we needed to be. We're close to that now and we're -- I think we will by the --

THE COURT: Well, you could say that in the note too. But I think -- it's out there --

MR. BUTLER: Right.

THE COURT: -- and you might as well be upfront about it.

MR. BUTLER: Do you want to put it in here or someplace else?

THE COURT: I'd put a footnote here about it.

MR. BUTLER: Okay. All right. So we should add it.

THE COURT: And you can say that you believe we're close to already being under the cap or something like that.

MR. BUTLER: Okay.

THE COURT: If that's what you believe on a good faith basis.

MR. BUTLER: So we should -- so what we should do is mention the cap, reference claims administration section -- there's a whole section in here talking about claims.

THE COURT: Right.

MR. BUTLER: So we can reference the claims administration section. I also think we should reference 12.3 of the plan -- 12.2(i) and 12.3 of the plan because 12.2(i) has, as a condition of the effective date that it can't be more than 1.45 billion and 12.3(i) has a mechanism on how that can be waived which involves the creditors' committee's participation. So I think if we're going to describe it we should probably describe this.

THE COURT: Just have a cross-reference to that.

THE COURT: Okay.

MR. FOX: I think that --

THE COURT: But that -- okay, go ahead.

MR. FOX: I think what Mr. Butler is saying, without explicitly saying is that as long as the claims come in under

the cap it's a hundred percent -- a hundred percent recovery of plan value. Whether they come in at the low end of this range at 3.2 or at the higher end of 3.6, is that right Mr. Butler?

MR. BUTLER: I believe that's correct, yes.

THE COURT: Well, maybe that's worth saying too?

MR. FOX: Yeah, because otherwise it creates confusion.

THE COURT: I mean, I -- I could tell you my -- my -- my hypothetical reader for this is my mother who is a very smart woman but she's not a business person and she's not a lawyer and I think she would say well, is it a hundred percent at 3.2 or a hundred percent at 3.6. So, I think you should -- that answer is fine.

All right. You all are probably thankful that I'm flipping a lot of pages here. All right. There are two related points here and they come up on pages that are quite far apart. On page 71 there's a discussion of the consideration to be received by GM.

MR. BUTLER: Were we -- page 71 you said, Your Honor?

THE COURT: Right. And this is the in section dealing with the GM settlement.

MR. BUTLER: Your Honor, can I -- just for a second, just for clarity on the record. Can I go back to what your prior -- Your Honor's prior comments on -- because -- and Mr. Fox's comments on XVIII -- or no, 23, excuse me, if that's all

right with Your Honor, just for a moment.

THE COURT: Sure.

MR. BUTLER: Because I -- as I understand it -- I was just talking -- consulting with Mr. Shaw from Rothschild and I think the point that Mr. Fox makes is a good one and we need to figure out how exactly to do this. The reality is that the par plus accrued is at -- is at 1.465 -- 1.45 billion dollars, right? We've all negotiated that as the cap. That's the basis on which you get par plus accrued.

THE COURT: Right.

MR. BUTLER: And there's a range expressed in here simply because it's the current range.

THE COURT: Right.

MR. BUTLER: And those two concepts are probably inconsistent with each other.

THE COURT: Well, but I think if you have the -- the -- I think it's okay to give the range of claims --

MR. BUTLER: Okay.

THE COURT: But if you have the footnote explaining the cap and then you say that the debtors are, you know, whatever you want to say confident or reasonably confident based on the claims process to date, that the cap will not be exceeded, if that is the case. Then it would be a hundred percent recovery. I think that's fine.

MR. BUTLER: All right.

THE COURT: The implication then is if, for some reason, it's not exceeded -- I mean, you're estimating a hundred percent recovery and that's fair because that's your belief. But if it's exceeded for some reason it won't be a hundred percent.

MR. BUTLER: Right.

THE COURT: So I think that's fine. Okay. I had only one comment on the GM settlement discussion and -- and frankly I felt that it laid out for the voting parties, other than this comment, the information they would need at great length and clearly. My comment is that in addition to the consideration to be received by GM in the settlement agreement itself, I think an important element of the settlement, and that's why it's, I think, in the plan. And the folks at Weil have been candid about this, is that not only is it so significant that it's worth putting in the plan -- it should be in the plan. But also the plan provides for a release that people are -- are voting on. And I think you should have, and maybe this is -- it probably is probably on seventy-one, in a different paragraph on the consideration to be received by GM, that even though it's not in the settlement except as the settlement contemplates a plan with releases, as part of the settlement under this plan GM is being released by creditors.

MR. BUTLER: Your Honor, we certainly -- it's not just creditors it's everybody. And we should probably --

again, clearly state that it's in another section and we'll do that. In fact, I mean, to your point, Your Honor, there is and maybe this is the appropriate place to say or maybe it's somewhere we should say this, we tried to say it clearly but maybe say it more clearly. You know, GM is really bargained for three major things here. I mean, they have bargained for the direct net consideration they're getting, which is less then they thought it was going to be but that net consideration. They have bargained for a plan formulation that is this plan, including the releases and they would say, as they have said before, and peace. Meaning they want peace, which includes everybody in place and the releases. And they've also bargained for the debtors' performance obligations under the agreements. I mean, because our performance obligations under the master restructuring agreement is an essential element of the settlement.

THE COURT: All right. Well, the reason I was highlighting this, and it goes to Mr. Brilliant's point, is that I think to evaluate the treatment of the MDL group and the TOPrS, among others, one of the things you need to take into account is the release provided for in the plan to GM and that's part of the give and take of the GM settlement, along -- obviously with the other factors. But I think people need to know about the importance of their vote in that context. So that's why I'm raising it.

And let me turn to the area that -- the first area that, I guess, maybe this is directly relevant which is the description of the MDL settlement and it ends at page 143. This is -- this is the -- I only have a couple places like this. This is -- this is a place where I don't have language for you because I don't -- I don't know the answer.

MR. BUTLER: I'm sorry. Where are you again, Your Honor? I'm sorry.

THE COURT: At the end of the description of the MDL settlement on page 143, right before the next new heading which is heading number 4 which says maintaining relationships with suppliers.

MR. BUTLER: Uh-huh.

THE COURT: And what I've written down here is that you -- you should state here that under section 510(b) of the Bankruptcy Code the -- either you accept this as a matter of law or it is contended that -- it's up to you whichever one you want to say, the claims of the plaintiffs in the MDL would be subordinated to the -- to the debt claims or on a par with the common stock claims -- the common stock interests, excuse me. Notwithstanding that the plan provides for the treatment described above and then state the rationale for that. Why is it in the interest of those parties who would be senior to nevertheless vote in favor of a plan that would so provide?

This doesn't have to be an essay; I just think you

need to lay out the main reasons. One of them that seemed clear to me was the release of GM. It's an element, since these people are creditors and interest holders that GM is bargaining for, as with for anyone else, and that they -- but there may be other reasons, you know. I don't want to presume what they are and I'm sure Mr. Etkin and you can make a list of them.

MR. BUTLER: And just so we don't need to -- we don't make it an essay, Your Honor, I'd be comfortable in expressing that whether it's contended at or whatever, that the MDL claims are junior to general unsecured claims. That's a proposition Mr. Rosenberg and I have been talking about and one on which we both agree. It is much fuzzier as to what they are below that class. Because remember there's debt securities claims here, there's a risk --

THE COURT: All right. You can make it as a contention, that's fine.

THE COURT: There's ERISA, that's all I'm going to --

THE COURT: But I do believe that people need to know that by voting in favor of the plan they're resolving that issue. And I think you should tell them that. And accepting that, you know, whatever rights they would have to enforce 510(b), those are being dealt with by the treatment provided for the MDL settlement under the plan.

MR. ETKIN: Your Honor, obviously I'd like to have

some input into that --

THE COURT: Well, I'm sure you would.

MR. ETKIN: -- language.

THE COURT: That's fine.

MR. ETKIN: I mean, and Mr. Butler raised an important point. I mean, this class consists of purchasers of senior debt, subordinated debt and stock --

THE COURT: Okay.

MR. ETKIN: -- and the treatment various under 510(b) breach.

THE COURT: That's fine. And -- and to be fair, what you -- what you all should do, after you work out this language, is when you send it to chambers you should e-mail it to the objectors and counsel for the two committees, GM, you know the usual suspects. Not settle it on them but when it's worked out send it. I have, a long time ago, agreed to do a lecture on Monday morning. So I won't focus on this till Monday afternoon anyway. So, you know, if someone thinks that the language that Mr. Butler and Mr. Etkin, perhaps with the input of Mr. Rosenberg, have come up with here, they can -- they can let me know, but you get the general idea.

MR. BUTLER: And I suspect -- I know Mr. Etkin pretty well and I suspect he'll help me this weekend, and our colleagues this weekend on this point. So I hopefully will get it to you --

THE COURT: I'm not telling you to, you know, a puff selling piece. This is -- you know, you've got to be -- particularly given the timing on this, which is that people have, you know, half a day to review it, it should be an honest -- you know, a pretty straightforward assessment. And if -- if there's some disagreement then couched in terms of the debtors' belief or whatever.

MR. BUTLER: And I think the -- and I think those things are all contained in the motion for approval in any event, so I don't think it's going to be very difficult.

THE COURT: All right.

MR. BUTLER: I get the point, we'll be happy to make it. And I think the point -- the relevant point, I think, that again is that whatever these claims are, the contention would be that they're junior to the general unsecured claims.

THE COURT: And that the --

MR. BUTLER: So that I don't think that we have to argue that where they fall below that, they may fall in different places, I'm not sure we have to get into that.

THE COURT: And the vote of people who believe that they would, under 510, be senior is a class in favor of the plan would resolve those issues with this treatment. And, you know, I -- I would expect that you would explain to them why you believe that's in their interest to do, in a brief list of bullet points.

MR. BUTLER: Will do, Your Honor.

THE COURT: Okay. All right. Okay. On page 165, and again this is the -- you're talking about the settlements embodied in the plan and the overall structure of the plan, I would add this language again, your vote on the plan will help to determine whether the settlements contained in the plan are approved by the Court. Thus an interest in -- in sections described below -- I'm sorry -- thus, for example, where creditors have the benefit of the subordination provision, as with the TOPrS, or a statutory right under 510(b), their vote in support of the plan would resolve those rights. And the Court will be, as I said earlier with Mr. Brilliant, the Court will be apprised of the senior -- the senior votes.

Okay. And then here you have a small section on the plan investors investment, I guess you should just briefly update that in light of today's hearing. And this is probably where you can put in that brief note where you actually say the debtors are prepared to, nevertheless under appropriate circumstances, consider alternative proposals and are aware of one that had been made recently to the creditors' committee that the committee is currently not pursuing or however you and Mr. Rosenberg want to word that last bit.

MR. BUTLER: I'll work out language with Mr. Rosenberg.

THE COURT: Okay.

MR. BUTLER: I think both -- I think we're concerned is, I think, also just -- with the equity committee, we're prepared to put language in here that certainly emphasizes the fact that all of us have fiduciary duties and we will continue to exercise those duties as we have throughout the case, to consider alternatives.

THE COURT: Okay. Unless Highland doesn't want to be identified, and I didn't take that from their objection, I think you should identify them.

MS. ELKIN: Your Honor, we submitted some language to the debtor which they're not totally happy with but we can work on it with them.

THE COURT: All right. Well, I think, pretty much what I said is sufficient. I don't want the debtors to trip up over or give anyone an argument that they have tripped up over anything in the EPCA.

MS. ELKIN: We understand completely.

THE COURT: The debtors have to be careful about that. So as long as two points have been made clear, which is that the debtors, under appropriate circumstances, will consider alternative proposals and in fact have -- are aware that one has been made to the creditors' committee by Highland. I think that those are the two points to -- to make.

MS. ELKIN: It was not, just for clarification, it was not a Highland proposal.

THE COURT: I'm sorry.

MS. ELKIN: It was by led by Highland.

THE COURT: I'm sorry, I'm using shorthand. However you all describe the makers of your proposal, if you want to say Highland led or a group.

MS. ELKIN: That's fine, Your Honor.

THE COURT: Are you prepared to have Highland be identified in the footnote?

MS. ELKIN: I don't think Highland needs to be identified. They're just one --

THE COURT: All right. Then that's fine.

MS. ELKIN: -- one member of -- it's a group of bondholders.

THE COURT: Okay. All right.

MR. ROSENBERG: And you're on the -- do the fiduciary duty of the committee presumably will be standard. I doubt if --

MR. BUTLER: I mean, I think that's the point -- the point that were focused on together, I believe, is that we will review alternatives as fiduciaries and that we'll fulfill our fiduciary responsibilities.

THE COURT: That's fine.

MR. BUTLER: That's our --

THE COURT: That's fine. And identifying that this proposal by a group of bondholders has been made.

MR. BUTLER: Right. Yeah, I mean -- what we're uncomfortable about from the debtors' perspective, Your Honor, is that proposal was never made to the debtors.

THE COURT: Well, I'm saying it's been -- it has been aired with the committee --

MR. BUTLER: Right.

THE COURT: -- and you can say what action the committee took on it.

MR. BUTLER: Right.

THE COURT: That's all you need to say.

MR. BUTLER: Because I'm just -- I'm -- you know, lots of people issued lots of proposals.

THE COURT: That's all you need -- it has to be accurate, that's all that happened. Okay. Now -- all right. The other point where I have -- I don't have language for you it's just a -- a concept but it's an important one, in your discussion about substantive consolidation and I -- I don't know if this is true. And obviously if it's not true you can't say it. But I believe that, towards the bottom of page 168, in the section that precedes the paragraph that begins as a result of the substantive consolidation described above, so you're in the paragraph that begins, "Taking these and other factors into account, the debtors determine, on balance, the substantive consolidation of the estates," etcetera, etcetera, is appropriate.

MR. BUTLER: Uh-huh.

THE COURT: If you -- if you go before the last sentence there, and this is -- again, if this is not accurate you can't say it but this is my concern. I would have language something like this, creditors of certain of the propose substantively consolidated debtors, and then you would identify what those debtors were, might contend that their debtor has the financial ability to pay them a higher or more certain recovery then their recovery under the plan. The debtors note, however, that to achieve this result the plan and its funders and investment mechanisms would have to be materially changed.

MR. BUTLER: That statement is accurate and it's accurate from the perspective of what holders of claims in the deconsolidated Delphi Corporation estate have informed the debtors. And it is accurate from what the holders of claims against the deconsolidated DASS LLC entity have asserted.

THE COURT: All right. So you should identify them.

MR. BUTLER: Absolutely.

THE COURT: And it seemed to me that you should probably have a cross reference also to the substantive consolidation and liquidation analysis, i.e. the substantive and non-substantive analysis that's -- that's back there.

MR. BRILLIANT: Your Honor, you know, I haven't been interjecting on all the points but on this one I would like to be heard. You know, in addition to substantive consolidation

has an effect on voting as well. The -- you know, depending on the classification, and it sounds like Your Honor's not intending to change the classification, you now have --

THE COURT: Right. I added a section on voting on the next page, on page 169. At the end of that page I'd start a new paragraph. That paragraph that's there at the end of the page talks about substantive consolidation being considered at the confirmation hearing if there's an objection.

And then I would add this paragraph; the Court will be apprised of, and may consider, the voting results on a company by company basis or debtor by debtor basis, however you want to do it, as part of such hearing. Thus, again, your vote on the plan is important.

MR. BRILLIANT: Your Honor, does it make sense there, also, let people know that failure to object to the substantive consolidation may effect their voting?

THE COURT: I don't think so. I mean, you -- I think it's pretty clear, you either object or you don't. I mean, I -- maybe I'm missing your point.

MR. BUTLER: Mr. Brilliant, we're not in the process of soliciting objections.

MR. BRILLIANT: No, no. But I'm just saying that if you don't -- if you don't object to substantive consolidation then effectively you're potentially, you know, agreeing to have somebody -- let's say for senior -- for my clients, for

instance, they're bondholders. They're senior creditors at the --

THE COURT: I think people know that. I mean, I just -- I don't think you need to tell people -- that leaves the impression that something else you don't object to, you still have rights in respect of and I just -- I think -- one thing that -- that everyone knows, including my mother, is that if you want to be heard in Bankruptcy Court, if you don't like something and you're willing to take the consequences of doing that you object. So I don't think you need to tell people extra to object.

MR. BRILLIANT: Your Honor, could we just -- while we're on this paragraph, there is a point in here. It says, "If no objection to substantive consolidation is timely filed by a holder of an impaired claim." The indentured trustee may or may not fit within that. I mean, it should say party in interest.

MR. BUTLER: I don't know that -- I don't know that the -- I mean, that's an issue -- I don't know that that's right, actually.

MR. BRILLIANT: Well --I --

MR. BUTLER: Just like Mr. Fox, you don't get to vote on the plan either.

MR. BRILLIANT: Well, we don't get to vote, that's right.

MR. BUTLER: And I don't -- I don't know that you get -- I think your rights at confirmation hearing are different then they are at a --

THE COURT: Well, why don't you say if no proper objection is filed and leave out the holder issue?

MR. BUTLER: All right.

MR. BRILLIANT: Yeah, I don't want people to be misled about what can or can't be done or who would do it.

MR. BUTLER: Okay. Got that.

THE COURT: So you just strike out by any holder affected by the plan. Okay. All right. And actually this is almost -- this is about it for me.

On page 176, and this is in the section dealing with the TOPrS subordination provision. Two comments, first is a -- I guess this is up to the debtors. I would -- I would give them some leeway, particularly in light of the conversation we had earlier about the GM settlement, somewhat along the lines of the discussion on the MDL, to state in greater detail their rationale for having this treatment for the TOPrS as opposed to simply leaving it up to the people getting -- leaving it up to the senior claims going against the TOPrS to enforce their subordination rights. But if you're going to do that, again, you got to be -- you don't have to do it. I don't think you need to but if you're going to do it you've got to be -- it can't be a puff piece. Like with the

MDL bullet points, it has to be logical and reasonable and accurate.

Whether or not you do that or not, I believe you need to add, at the end of this discussion before the next heading on post-petition interest, please see pages blank or section blank, and this goes back to the summary, for discussion of the negotiated plan value and the fact that the actual, trading value of the distributions to holders of senior debt may be less than (or greater than) plan value. An affirmative vote on the plan, by the holders of senior debt, could constitute acceptance of the plan -- I'm sorry, of the plan's proposed resolution of the TOPrS subordination provisions or provision.

MR. BUTLER: Is it could accept or would accept, would constitute?

THE COURT: I put could. And then I would add the language that we've been adding, that the Court will be apprised of the votes of the senior -- of the holders of the -- well, of the -- I'm sorry -- of the senior debt holders. And as a consequence, your vote is important.

MR. BUTLER: And just for the record, Your Honor, our intention here, throughout this, is to talk about the senior unsecured -- you know, the general unsecured creditors, they're senior -- because it's not just the noteholders, just to be clear about that.

THE COURT: Well, but I think the defined term --

MR. BUTLER: The bondholders --

THE COURT: The defined term senior debt is everything.

MR. BUTLER: Right. Correct.

THE COURT: Yeah, so you should be clear on that.

MR. BUTLER: Yeah, I want to be clear on that. It's not just the bondholders.

MR. BUTLER: Right.

MR. FOX: Well, there is some dilution because of substantive consolidation.

MR. BUTLER: Well it's more than that. There -- even on a deconsolidated basis --

MR. FOX: Yeah, I know --

MR. BUTLER: -- there are other senior debt holders --

MR. FOX: I understand.

MR. BUTLER: -- at Delphi other than the bondholders.

THE COURT: All right.

MR. FOX: I understand but there are --

THE COURT: But again, you've defined senior debt, I think, to include that. And I've used that term, senior debt.

MR. BUTLER: Got it.

MR. FOX: The point simply is, Your Honor, though that with substantive consolidation you, in effect, create more senior debt that the TOPrS would give up to based -- because of

the definition.

MR. BUTLER: Correct. That is correct.

MR. BRILLIANT: Your Honor, it's just --

THE COURT: Well, I guess that's right. Although since it's in a plan where that doesn't happen you don't run into that problem.

MR. BRILLIANT: Your Honor, should this paragraph that you're talking about be in the TOPrS section or the senior debt section or should it be in both sections?

THE COURT: I mean --

MR. BRILLIANT: Or have it in one and cross referenced in the other.

THE COURT: I think I'd have it in the TOPrS section because if you are a -- if you're a holder of senior debt you're going to look to see what they're getting.

MR. BRILLIANT: You might look to see what the senior debt is getting and --

THE COURT: I don't mind a cross reference in the senior debt; in the description of the senior debt saying see a cross reference. No, you know what, it's all -- it's all together. I really think it's all together. I think if you know you're the beneficiary, as I imagine everyone does, certainly -- certainly the senior bondholders must --

MR. ROSENBERG: Well, some are more sophisticated then others, Your Honor.

MR. BUTLER: Well --

THE COURT: But the summary talks about the TOPrS. I think people are alerted to this issue already by the summary and the -- I think it's okay the way it is. But if you -- if you -- you know, if you just want to have a cross reference to it that's fine, in the senior -- in the general unsecured claims discussion just have a cross reference.

MR. BUTLER: That's -- I mean, that's on page 175. Its right -- it's easy to see.

THE COURT: I understand. It's -- they're right next to each other.

MR. BUTLER: So just -- is that optional for us to consider, Your Honor, or is that being required?

THE COURT: Well, this is -- this is actually not in the section -- there is no section dealing with TOPrS. This section says satisfaction of TOPrS subordination provisions.

MR. BUTLER: Right. It's actually part of the --

THE COURT: So this is really on the subordination -- I don't think you need it except in this particular section. I'm pretty sure that those are all my comments.

I did have a couple comments on the solicitation procedures order but those are my comments on the disclosure statement.

MR. BUTLER: Would it be okay then to go through and figure out who else wants to raise comments --

THE COURT: Yes.

MR. BUTLER: -- on the disclosure statement?

THE COURT: Yes.

MR. BUTLER: So we can get -- we did, Your Honor, exhibit 81, and I want to hand to hand it up to the Court so you actually have it. If I may step up, Your Honor? Exhibit 81 represents some further black line changes that we went over with Mr. Fox to deal with some of his objections. They didn't resolve all of his objections but I think he told me we were making progress. So we would be incorporating all of these into the plan as well -- I mean into the disclosure statement as well. And I just wanted the Court to be apprised of it.

THE COURT: Okay. Let me just --

MR. BUTLER: This was -- this is the one that eliminates, you'll notice, some of the boxes have gone and things like that.

THE COURT: Okay.

MR. BUTLER: Mr. Fox made other comments but I just wanted to make sure for the record that --

THE COURT: No, I -- I'm comfortable with that. I -- it was clear to me, in reading his objection, that some of the boxes should go. Not the editorializing about what people might or might do but just as a fact that they're superseded. Let me look at the other ones.

MR. BUTLER: So then the -- I guess the next step,

Your Honor, would be to take them in whatever order people want to. I think there are --

THE COURT: Okay.

MR. BUTLER: -- it's Mr. Brilliant and Mr. Fox and to the extent Mr. Etkin or, I don't know whether Highland has anything else they want to say today. Those are -- those would be the three or four people who, I think, are still in play.

THE COURT: Is he still -- oh yeah, there he is.

MS. ELKIN: I didn't merit a front seat.

THE COURT: Well, you're also hiding -- it's Ms. Elkin and Mr. Etkin, so --

MS. ELKIN: Right.

THE COURT: Okay.

MS. ELKIN: Judy Elkin for Highland Capital. Your Honor, we will work with the debtor just to -- on the language that the Court suggested --

THE COURT: All right.

MS. ELKIN: -- to the extent necessary. With respect to the other objections raised, I think based on the Court's comments to the extent they're necessary we reserve them for confirmation. We won't pursue them right now.

THE COURT: Okay. That's fine. And let me say it for the record, the whole premise of not dealing with most confirmation objections, except for the classification and disparate treatment ones that I talked about as well as the

substantive consolidation ones, is that my view is those are all properly raised at confirmation. After a vote it may be moot, it may be, at that time -- it clearly would be at that time based on a particular record. And therefore everyone's rights to object to the plan are fully preserved and reserved. And that goes, obviously also, for my -- it goes for the issues that I did discuss which is substantive consolidation and classification and -- and disparate treatment.

MR. BUTLER: Your Honor, also on that, just on that point if we could ask, we typically, in these circumstances, ask the Court to also indicate though that while people's rights are preserved, that to the extent someone wants to continue this -- any objection that they made at the disclosure statement hearing, this confirmation objection --

THE COURT: Oh no, they've got to file an objection.

MR. BUTLER: -- they need to refile it.

THE COURT: Absolutely. You've got to file your objection.

MR. BUTLER: -- as a confirmation objection at the confirmation hearing.

THE COURT: Sure.

MR. BUTLER: Okay. I just wanted to make sure the record is clear --

THE COURT: Absolutely.

MR. BUTLER: -- clear on that. Thank you, Your

Honor.

THE COURT: Okay.

MR. BRILLIANT: Your Honor, just a couple of things. And I apologize, there's so many versions of this plan and the black lines that I've been trying to follow along with you and even my black line doesn't match up with some of the page references. So I'm going to do the best I can.

THE COURT: You can sit in the witness box if you want, I won't put you under oath.

MR. BUTLER: But I will ask questions.

THE COURT: It's okay.

MR. BUTLER: Having a plaintiff's attorney in the witness box is a rare opportunity.

THE COURT: It might be a good thing though for every -- every --

MR. ETKIN: I still don't call myself a plaintiff's attorney, as surprised as you might be at that.

Your Honor, just a few comments and it won't surprise you that they really come into play only since we agreed to a proposed modification of the settlement.

THE COURT: Okay.

MR. ETKIN: And that's reflected in the disclosure statement and I think the few pages, the provisions that you wanted us to add something to is where the modification is laid out.

THE COURT: Okay. And remind me, where is that again because I took off my yellow tag.

MR. ETKIN: I think that's at --

MR. BUTLER: Well, what's the section number? Maybe that hasn't changed.

MR. ETKIN: It's at pages, on my draft -- well, I actually do have the section number. It's VIII, D(3), C(1). Well the page, okay. I'll try to give you the page.

THE COURT: No, let me just -- just a second.

MR. ETKIN: From my -- on my draft it starts at around --

MR. BUTLER: I think its page 139.

MR. ETKIN: 139.

MR. BUTLER: Right. And I think -- I still think it is.

MR. ETKIN: And goes through to 142.

THE COURT: Okay. Yeah.

MR. ETKIN: And that -- and we've talked about the language there and we're -- we're fine with that, Your Honor. The debtor made a couple of changes that we requested in terms of outlining what the -- what the agreed upon proposed modification is.

THE COURT: Right.

MR. ETKIN: The issue that I had raised with the debtor that's still outstanding relates to page -- let's see --

it's BS-177. And it talks about -- it's the description of Class E, which are the 510(b) note claims.

THE COURT: Okay.

MR. ETKIN: And only two comments there. There was originally language in that section, in the prior iterations of the disclosure statement which is set forth, actually, in the executive summary as well, that talks about the distribution and the same proportion of new common stock and discount rights that are made to holders of general unsecured claims. That -- that reference found its way out of the December 3rd draft and we wanted that back in because it's consistent with the executive summary as well as the terms of the settlement agreement. So that's -- that's one comment there.

THE COURT: Well, let's -- is there a reason? Was that just a typo or --

MR. BUTLER: Well, I -- this is actually a black line against the September -- this is against the September 6th plan, right? I mean, I'm not sure it was ever in -- in this class treatment. I think it was --

THE COURT: Well, the -- at least the page I have is the 510(b) equity claims --

MR. BUTLER: All right.

THE COURT: -- not the note claims. And I though the equity claims -- they don't -- they don't flow with the unsecureds they flow with the --

MR. ETKIN: It's really one claim, Your Honor, and the treatment is the same with respect to the entire claim that's been provided.

THE COURT: Well, if that's what the settlement provides, then it should be in. I mean it's easy.

MR. ETKIN: And I do think it was in a version and it --

MR. BUTLER: Your Honor, I'm sure I can --

THE COURT: It's not in the --

MR. BRILLIANT: It's in the equity --

THE COURT: It's not in the black line but if it's the same -- if it's in the term sheet --

MR. ETKIN: It's in the settlement agreement.

THE COURT: If it's in the settlement agreement then you should just put it in, okay.

MR. BUTLER: Okay, Your Honor.

MR. ETKIN: And the second point there --

MR. BUTLER: I just want to -- just -- I'm sorry.

MR. ETKIN: Sure.

MR. BUTLER: Just one moment. I just wanted to indicate that we should -- if we're going to make the changes -- that change, if we're going to make it, ought to be in all three classes, all right, the -- dealing with the 510(b) note claims, the 510(b) equity claims and the 510(b) ERISA claims because they're all three the same. And it should be

reflected in the summary as well as in the body.

THE COURT: Okay.

MR. BUTLER: I just want to make sure we got it on the record and --

MR. ETKIN: It's already in the executive summary, that language. So --

THE COURT: Yeah, it is, actually. I meant to say that.

MR. BUTLER: That's where I saw it. But I just wanted to say --

THE COURT: Okay.

MR. ETKIN: Yeah, and that's -- that's -- obviously that's appropriate.

THE COURT: All right. But it should be -- when you actually describe the treatment in more detail it should be there.

MR. BUTLER: Okay. All right.

MR. ETKIN: And also, with respect to that same paragraph, Your Honor, we had suggested some language to the debtor in terms of changing that around and that wasn't accepted. And then last night we provided or tried to provide some compromise language. And the point is, quite simply, that there's -- there's reference to, in that paragraph now, as may be modified on a non-material basis by the order of the MDL court, that's talking about this deal, this modification that

we've agreed to and that's now before Judge Rosen.

THE COURT: Right.

MR. ETKIN: I think -- and it's described, as I said previously, in that prior section, the four pages that describe the settlement. I think there needs to be some reference back to those four pages, that provision that describes what that modification is so we know that we're talking apples to apples. So I just suggested that we just add, at the end of that language that I just quoted, as described in Section VIII D(3) C(1) --

MR. BUTLER: And that was not --

MR. ETKIN: -- of the disclosure statement.

MR. BUTLER: that wasn't acceptable to us because the treatment of the class ought to be what Judge Rosen orders in the MDL case, is the -- because he's yet to enter these orders. Whatever it is, I don't want to get trapped here that we have out for -- for voting something that turns out that there's any, you know, whatever the non-material modification finally approved by Judge Rosen in that, which will have to have the consent of the class plaintiffs, whatever that is, that's what we're referencing in here. And I wanted to make absolutely sure that we didn't have any kind of a hiccup in the -- you know, in between them. So, I mean, this is -- this is -- it's got to be non-material and it's got to be in connection with the monetization of the distribution. But I wasn't going to,

you know -- it seemed to me that the order that Judge Rosen has yet to enter ought not be characterized by us other than by those two descriptors. That's why we did not accept the comment.

MR. ETKIN: Well, here's the problem, Your Honor. What's been put on the record before Judge Rosen, what's been described to him, what's been described now to you in the context of the revisions to the disclosure statement is what we've agreed to.

MR. BUTLER: Right.

MR. ETKIN: And that's what's going to be put in front of Judge Rosen.

THE COURT: I know but he's -- but -- A -- although he's preliminary approved it, he hasn't finally approved it.

MR. ETKIN: That's right. He's provided for a notice.

THE COURT: And B, what you've agreed to also contemplates, I guess, some flexibility on -- on changing it in some regard, as he did before.

MR. ETKIN: No.

THE COURT: As was done before.

MR. ETKIN: Done before in what context, Your Honor?

THE COURT: The thing that's out now.

MR. ETKIN: Well, yeah. If -- if that comes to pass, and we're -- we --

THE COURT: I -- what Mr. Butler doesn't want to leave the implication of is that the only change that can be made is the one that --

MR. ETKIN: Well, the only change that could be made is the one that we agree to.

MR. BUTLER: But my -- and I think that's always --

MR. ETKIN: And that's the one we've agreed to.

MR. BUTLER: But I think it's all has to do with Judge Rosen. I mean, the fact of the matter is let's -- for the moment, I can't imagine this but let's for the moment assume that the notice that's sent out by Judge Rosen -- by Judge Rosen's order there is some issue that someone comes in with --

THE COURT: Let me cut through this. I don't think there's any implication in this language that you can be forced into anything.

MR. BUTLER: Right.

THE COURT: And I think there would be an implication that either Judge -- that the debtors are implying or I am implying that either the debtors or Judge Rosen could be forced into something. And I don't want to do that.

MR. ETKIN: Right.

THE COURT: So, I think --

MR. ETKIN: Which is why the nature of this is -- is by virtue of agreement.

THE COURT: No, no. Because he's not agreeing to anything, he's reviewing it. And I don't want there to be --

MR. ETKIN: Despite the agreement, exactly Your Honor. And it remains subject to his approval.

THE COURT: I just -- I don't think -- I don't -- when I see this I don't see any implication that you -- that your clients are going to be able to be bound to anything other then what they agreed to. So, I -- and clearly, as of today, the only thing they have agreed to is what's out there.

MR. ETKIN: That's right.

THE COURT: So I think it's clear. I really don't -- I don't think anyone would be confused by this.

MR. ETKIN: Well, if that -- if that's your reading, Your Honor, then I'm satisfied with that.

THE COURT: Yeah, I -- I think that the alternative would be to put some pressure on -- on the Judge Rosen, frankly, and on the debtors that would be -- would be confusing.

MR. ETKIN: Well, I don't necessarily buy into that, Your Honor.

THE COURT: All right.

MR. ETKIN: But the important thing is that the modification is what we've agreed to.

THE COURT: Yeah, and there's --

MR. ETKIN: And it's nothing else.

THE COURT: You have the ability to agree to non-material other things, if you want to.

MR. ETKIN: Well that's, again, up to Judge Rosen as to --

THE COURT: Right. But you haven't yet. So I think that's clear.

MR. ETKIN: That's right. Okay. That's fine, Your Honor. The only other change then, Your Honor, would be -- I think it's on page 195, at least it starts there. The reference to Judge Rosen's order previously, in the disclosure statement, has been the order of the MDL court with regard to this --

THE COURT: So you need to update this now, is that what you're saying?

MR. ETKIN: No, I just want this section to be consistent with what's been said earlier.

THE COURT: Okay. So what is this? This is 18(a) or what --

MR. BUTLER: Where are we?

MR. ETKIN: 18(a).

THE COURT: Yeah.

MR. ETKIN: That's right, Your Honor. Previously it's been described as the order, which is fine. Here it's changed to any order. And I think it needs to be consistent with the order that's presently before Judge Rosen regarding

this modification. So I think the word any implies something that, you know, we're obviously uncomfortable with and it's inconsistent with how that's been described in prior sections, the two sections that we've just talked about. So I don't think that that's a distinction without a difference.

MR. BUTLER: I actually thought the word -- the formulation of any was the proper formulation. Because my view is, the Judge has entered a preliminary order, he's entered a final order, he's going to enter a final order. It's more than one order. I mean -- again, this isn't trying to suggest that orders can be entered that would be not acceptable to the lead plaintiffs. It's to make sure that we've got the proper flexibility in this plan and disclosure statement as it's going out for a vote so that the action can take place in the MDL court, not here, on this topic.

MR. ETKIN: Well, action can still take place in the MDL court on this topic, without implying that there's going to be a massive set of additional orders or more than the one order that Judge Rosen is currently focused on, which is the final order approving the settlement. So that's -- that's our point there, Your Honor.

We also have the other point that we just disposed of, by virtue of your comments. The only other thing --

THE COURT: Well let me -- let me just focus on this. Well, he hasn't entered the order yet, right?

MR. ETKIN: He has not entered the final order yet. And we did appear before him to advise him of the proposed modification.

THE COURT: Why don't you say such order as opposed to any, just say such?

MR. ETKIN: That's fine.

THE COURT: Shall remain in accordance with such order.

MR. ETKIN: And those changes would just have to carry over to corresponding provisions of the plan as well, Your Honor.

THE COURT: Okay.

MR. ETKIN: And I did send an e-mail last night that fought a couple of changes that weren't made to the plan that -- but changes were made to the disclosure statement or to other sections of the plan. And I don't want to --

THE COURT: I'm sorry, there were changes made to the disclosure statement?

MR. ETKIN: There were changes made to the disclosure statement --

THE COURT: But not yet to the plan?

MR. ETKIN: -- and the plan.

THE COURT: Oh, and the plan.

MR. ETKIN: And the plan, to correspond to the changes in the disclosure statement.

THE COURT: Right.

MR. ETKIN: But there were a couple of additional changes that should have been made to correspond to changes that have already been made. I'd be happy --

THE COURT: To the plan?

MR. ETKIN: To the plan. I'd be happy to go over them.

THE COURT: No, you can just go over them --

MR. ETKIN: But I'm assuming that we can straighten this thing out.

MR. BUTLER: Only if they're corresponding changes, Mr. Etkin.

MR. ETKIN: That's --

MR. BUTLER: I mean, if there are other -- because there have been some suggestions you've made that we've not accepted and I don't want to have this colloquy --

MR. ETKIN: No, now -- well --

MR. BUTLER: -- to suggest otherwise.

MR. ETKIN: Well tell me, Jack, if you want me to go over them now, I'll go over them in detail.

MR. BUTLER: If they're corresponding -- look, if we made a change in the disclosure statement and the same change needs to be made in the plan, fine to do that.

THE COURT: Or vice versa. If you made it to the plan and you haven't made it to the disclosure statement.

MR. BUTLER: Or vice versa, that's right. Exactly. I'm happy to -- they should match.

THE COURT: Just word for word or an accurate summary.

MR. BUTLER: Right.

THE COURT: Okay. That's fine.

MR. ETKIN: The only thing that wasn't made before, that you've just resolved Your Honor --

THE COURT: Okay.

MR. ETKIN: -- the change of the word any to such.

THE COURT: Okay.

MR. ETKIN: And that's -- that's in our e-mail as well.

MR. BUTLER: Fine.

MR. ETKIN: But the others are -- are strictly corresponding changes.

THE COURT: Okay.

MR. ETKIN: And we can go over them. This is from the e-mail I sent last night, Your Honor.

THE COURT: Okay.

MR. ETKIN: The only other point I raised, Your Honor, that -- that I didn't actually supply language for was the -- the redirection of the cash that's referred to as part of the modification.

THE COURT: This is to -- in order to exercise the

discount, right?

MR. ETKIN: No, this is the fifteen million dollars.

THE COURT: Oh, okay.

MR. ETKIN: There's no mention of it at all in the plan but there's no discussion in the disclosure statement of when or how it's going to get paid. And I think that --

MR. BUTLER: And there's not going to be. That'll be dealt with in the settlement order with -- and Judge Drain approves the plan.

THE COURT: I mean, it just assumes it's going to be there for it to do -- I didn't think that was a problem.

MR. BUTLER: He hasn't approved the MDL settlement yet. When he approves it, that'll happen.

THE COURT: Well, two judges haven't.

MR. BUTLER: Right. Correct.

MR. ETKIN: Right.

THE COURT: That's fine. Okay.

MR. ETKIN: That's it, Your Honor.

THE COURT: All right. Okay.

MR. FOX: I was just going to ask if you wanted to take a break, since it's almost 2:30.

THE COURT: How much longer do --

MR. FOX: Well, it may be -- to save a little time, we can, sort of, like Mr. Etkin, I think we've got some things that have been covered, some things are still floating around

on multiple pieces of paper.

THE COURT: Well, I'm sorry, do you want to -- I thought you -- you were pretty much resolved at this point with --

MR. FOX: Well, there's still some issues that I think --

THE COURT: Okay.

MR. FOX: -- we'd like to discuss.

THE COURT: Well, are those issues you want to talk about or -- I mean, with the debtor or do you want to --

MR. FOX: I think I need to talk to you about them.

THE COURT: Okay. Well let's do that for, at least, ten or fifteen minutes.

MR. FOX: Okay.

THE COURT: Before taking a break.

MR. FOX: I'm sorry?

THE COURT: Before taking a break.

MR. FOX: Well, I just thought it might be more efficient if we took a break.

THE COURT: Not really.

MR. FOX: Okay. No, that's fine.

MR. BRILLIANT: Your Honor, if you're going to take a break in ten or fifteen minutes, in any event, I'm happy to do my issues and then Mr. Fox can talk during the break.

MR. FOX: No, I don't need to talk to them.

THE COURT: One of guys just go ahead now.

MR. FOX: Your Honor, I think there's some minor issues that I'll try to run through. I think there are two, kind of, more central issues; one particularly which goes back to the whole concept of explaining to people the valuation concept and so that they understand what they're getting here. And the debtors made some effort in that regard but I had suggested some further or a different or what I think is a better way to do that. What I'd like to do, if I could, is step back a minute and explain to you why I think that's important.

THE COURT: No, I know it's important.

MR. FOX: No, no, no. But there -- there are a lot of different ways that one can realize or lose value here. And it's not -- because of that, depending on how sophisticated or unsophisticated one is, that may or may not be so evident.

You start from, you know, the Rothschild valuation of between and eleven and fourteen and you have a midpoint valuation. And the debtors have put in a calculation now, showing that the percentage recovery is based on that. They have not translated those recoveries in that chart into the other chart of recoveries where they basically say you get a hundred percent at plan value. So yeah, I suppose somebody could do the math. My preference would be that you not put individual or put holders in a position of having to figure

that out themselves.

THE COURT: I think it's -- I think they're adequately apprised of it at this point. I -- I think that the principle of what the plan is doing and what it's not doing is clear. And the chart is clear. And I just don't want to keep reiterating it to them. I think it's -- I think it's clear as it is.

MR. FOX: Well, then I'll -- there's -- we'd also ask the debtors, at least and they've not in the text put this in, the -- as the issue came up in one of the comments Mr. Butler made about making a general change throughout, to consistently use the term, whether it's plan value or plan equity value or something. I think that would be helpful.

We had asked that the debtor make a change, the very -- I think it was the very first time that that came up in the executive summary on page DS-XI and to indicate right there where it says plan value that that's a negotiated enterprise value of --

THE COURT: I put that in. That's my language, in negotiated plan enterprise value.

MR. FOX: Oh, I'm sorry.

THE COURT: You won that one. Remember I said on that conference call you had a lot of good comments.

MR. FOX: Right although it doesn't indicate what the number is --

THE COURT: That's the next page. That's, like, two pages later. It comes out.

MR. FOX: Okay.

THE COURT: You have the chart and everything.

MR. FOX: On the event risks, I think we have taken out some of those. I think there're a few, though, that -- for instance, the exclusive period to file a plan at December 31, that's still in the chart. There -- if this is -- if this disclosure statement's approved, then the debtors' time to -- then we move on to their time to solicit acceptances. And then that one becomes basically irrelevant at that point for purposes of this plan.

THE COURT: I always extend -- I mean, if I were representing a debtor, I would want to extend them both forever.

MR. FOX: Well the question -- this section was added at the time that the creditors' committee stood up and said we're not going to support what the debtors' doing.

THE COURT: Right.

MR. FOX: And it became --

THE COURT: Wouldn't that -- but I think -- my view is that if the plan were not to be confirmed, the case would have that risk, because a lot of people would be tempted to stand up and say the debtor couldn't do it, we want to do it now. So I think it's legitimate. It's not -- you know, I

think for anyone whom -- where the exclusive period matters to someone, and for a lot of people it doesn't really matter, because they don't really know it, but I think for those to whom it matters, I think it is -- it is a risk. It's not as big a risk as other things, but it's indicative of what would happen if -- if the course changed -- the case changed direction.

MR. FOX: Okay. And on the two risks at March 31, both relating to the UAW, they're effectively the same -- they're part and parcel of the same thing. And we suggest that they be combined because they're not two different things that are going to happen. They get to that date and then they don't meet the benefits, or if they change the benefits at that point, the strike risk exists.

THE COURT: But that --

MR. BUTLER: They are two separate issues.

THE COURT: -- but I think -- I think that explains the risk and it's also -- I mean, my experience is that while the UAW has been constructive, and as I said earlier today, sophisticated. They really know their rights. And they, you know, they know those contracts like the back of their hand. So I think it's -- I think those are two important points. And, you know, if Mr. Kennedy -- that date is important to the unions --

MR. FOX: No I --

THE COURT: -- that have the benefit of that guarantee.

MR. FOX: -- I agree that that's the case. The point that I was trying to make was that the event, for purposes of the effect on the debtors, for instance, or the recoveries --

THE COURT: Well, but you know --

MR. FOX: -- I know it's two separate things.

THE COURT: -- I would identify them both. I think that it has -- even if they didn't strike, there's something I would be worried about, because it affects the labor relationship. Because I know they're worried about it, if in fact the plan doesn't get confirmed. I hope they're not unduly worried, but I think that's an event risk of the plan not being confirmed.

MR. FOX: I think Mr. Butler alluded to it in the places where he uses the claims range of 3.2 to 3.6, isn't that right? You alluded to the suggestion of just saying up to a maximum of whatever the number is? The range becomes confused.

MR. BUTLER: Well, no. What I agreed to do was in the 3.2 to 3.6 range in the summary what we said was, I'm going to drop the footnote of the explanatory paragraph that we discussed on the record with the Judge.

THE COURT: They have a range. I think it's properly inclusive. They have a range, but then they say, even though we -- we're not positive that we're going to be within the

range, this is where we think we are which leads to a hundred percent recovery. And I think -- I think that alerts people to the fact that there might be some play in the joints, but that the debtors -- I think it's okay.

MR. FOX: Well the point that was -- I think, I could be wrong, that as long as they don't exceed the upper limit, that there's no impact on recoveries. So if you put it --

THE COURT: But don't you want to -- I think it's fair to alert people that they might exceed the upper limit based upon their -- they have a range.

MR. FOX: -- I agree with that. The range that's listed, though, is within the upper limit. My point is, in fact --

THE COURT: Is it? I didn't know that.

MR. BUTLER: The point you're making, which is an academically correct point, but you're only looking at it one way, which is typical, in the sense that you're looking if it gets too high --

THE COURT: Well, now, you know, I know we haven't had lunch yet, but go on --

MR. BUTLER: -- no, no, no. But -- it's a range. But if it gets too high, he's saying it may not be par plus accrued recovery, but if it's at the low end, right, then it's arguably --

MR. FOX: No.

MR. BUTLER: -- because the shares are allocated, it's arguably slightly better. I mean, that's how the -- I mean, it's a settlement case. It's not perfection because the stock -- everything's been allocated.

MR. FOX: I'm not -- no, I'm not arguing about that.

THE COURT: I think it -- well, I think his point is that, is it -- I didn't know this. The range of claims, whatever it -- if anything falls within that range, you're under the cap? Is that what your point is?

MR. FOX: As long as you're under the cap you get a hundred percent regardless of the range. And I was confused when I read it.

THE COURT: All right. Well, that's worth putting in the note then, I guess --

MR. FOX: That's really --

THE COURT: -- that anything -- and hence --

MR. BUTLER: I'm trying to understand the point --

THE COURT: -- being within that range -- being within that range also puts you within the --- you know, under the cap.

MR. FOX: The point is, creditors don't need to be worried that their recovery is affected depending on the range of claims, as long as the upper end of the range falls under the cap. Because somebody reading it, as I did when I read it, could be -- could believe that depending on where the claims

fall within the range, even though it's under the cap, could affect their recovery.

THE COURT: Yeah. You made -- I'm going to reverse course here. I think that if that range of claims is all -- no matter whether you're at the top end or the bottom end, is -- leaves you under the cap, then you should probably say that in your footnote.

MR. BUTLER: Actually the cap is in the middle of that range.

THE COURT: Oh, all right. Well, then that's -- then you should say that. Then you should say that.

MR. BUTLER: Which was what I was doing to do.

THE COURT: Okay. That's fine. All right.

MR. BUTLER: Okay. All right. Then now --

THE COURT: Okay.

MR. BUTLER: -- right.

THE COURT: So we were at the -- all right. Fine.

MR. BUTLER: That's what I'm saying, the cap is the middle -- all right. Exactly right.

THE COURT: Okay. All right.

MR. FOX: Well, in that case, then, if --

THE COURT: Then you should say it's in the middle -- midpoint of the range. That's fine.

MR. FOX: -- well, in that case, though, then I think if we exceed the cap --

THE COURT: No. Then you -- then it's clear. There's an adjustment. You -- I don't think you need to spell that out. I think that's clear.

MR. FOX: Well --

THE COURT: As long as you give people the point where the cap is in that range, then they can do the math in their heads.

MR. FOX: I'm not sure about that. But the debtor added language which I thought was in response to another request we had, indicating that they don't think that they'll exceed the cap. I don't -- it seems inconsistent to say --

THE COURT: No, you could -- I don't think -- I mean, there's a range. They haven't liquidated these claims yet. But they can still give their judgment as to the likelihood of what they'll be liquidated at.

MR. FOX: Well, I would ask, I know Your Honor feels otherwise, but I would nevertheless make the request that if the debtor believes that the higher end of the range is above the cap, that they indicate what the diminution and recovery would be if that higher end of the range is reached.

THE COURT: I don't think you need to do that.

MR. FOX: The -- we talked about dilution, Your Honor. There are two issues that were not discussed. One is the effect of the emergence cash bonuses, which are different than the equity set aside. And I don't believe that -- it's

like eighty-something million dollars, I think.

MR. BUTLER: It's not diluted. That's a cash expense rolled up into the cash part of the plan.

MR. FOX: Okay.

THE COURT: Okay.

MR. FOX: Thanks. And then I also -- it was my understanding that even with the management compensation plan that there's a three percent initial grant at emergence.

MR. BUTLER: I didn't say that. What I said earlier was, when we were talking about this earlier on, I said that there was an eight percent that would be issued -- that would be authorized but not issued, and that some portion of that, depending upon what the determinations are by the comp. committee and the -- assuming the plan's confirmed and the Court confirms the plan, there'll be some amount of awards given in conjunction with that plan that's adopted. Now, the exact timing when those are issued, I suspect that they will be at or around time -- the effective date. I know that the -- some of those, for example, some of those are in the form of RSUs. Some are in the form of options. Some of it will be -- which is still within the three percent. It's not like people are going to get all of them as stock grants and be able to go away. And there's -- and as the plan investors had negotiated it, half of them are performance-based over a three-year period, so that, you know, it is not the case that people are

getting even a three percent grant that you can go walk away with and this is the stock you have.

MR. FOX: But if it's coming out of the finite amount of stock at --

MR. BUTLER: It's not coming out of the stock allocated to the creditors.

MR. FOX: -- but if it's -- no. But if it's outstanding at emergence or effectively at emergence, it's diluted. If it's creditors' shares --

THE COURT: But if -- it's diluted across the board, isn't it?

MR. FOX: Well, nevertheless, if you're telling creditors what they're getting but you don't take account of something that's going to dilute them on day one, I --

MR. BUTLER: I mean, there is disclosure in the thing that there's --

THE COURT: Yeah. That's in the executive --

MR. BUTLER: -- executive concept.

THE COURT: -- the compensation section.

MR. FOX: But it's not -- but it doesn't --

THE COURT: I mean, I guess -- I'm not -- as long as there's the note that we talked about saying that this, you know, these are the issued shares and -- I'm not uncomfortable about that. The point of the -- if in fact the stock option plan was coming out of a particular constituent's hide, I'd

think about it differently. But it isn't. And the theory of it is that every shareholder benefits from it.

MR. FOX: There's no question about that, Your Honor, but I'm concerned about the effect that it has. Even though it's spread over everybody, some of that is the unsecured creditors.

THE COURT: I don't -- I don't think so.

MR. FOX: The last point, Your Honor, the last main point. In the section on substantive consolidation, the discussion of the factors to be considered and the statement that the debtor has considered those factors and reached a decision, but there's no -- there's no discussion whatsoever of what the actual facts are on which the debtor made its decision. And we've asked for that, and the debtors declined to do so.

THE COURT: Well, that's why I told them to explain who is -- which creditors might be affected and why, notwithstanding that, they believe it's in the interest of every creditor.

MR. FOX: Well, I know I appreciated the fact that Your Honor asked them to do that, but it wasn't -- but it doesn't really give the creditors --

THE COURT: This is -- this is for voting purposes?

MR. FOX: Yes.

THE COURT: If someone wants to object on the basis

that the plan provides for the substantive consolidation it does provide for, I'm sure there'll be discovery and, you know, a whole litigation festival. And all of that stuff will be developed at nauseum.

MR. FOX: I didn't mean to turn it into that --

THE COURT: No, I know.

MR. FOX: -- what I meant to do was to give people enough information so that they can decide for themselves that they should accept or not accept the debtors' determination.

THE COURT: But it -- but it's not a litigation -- I guess the debtors are being pretty candid. They're not asking people to accept the plan because they think they will defeat them in a contested substantive consolidation analysis. They're asking them to accept the plan because they believe that at the end of the day it's good for all their creditors. If they could say that factually, then I think that's -- that's their point. I mean, that's -- it's not a litigation analysis. It's a, you know, you benefit from this analysis. And they should identify who might, if there is some group, might not benefit and why they nevertheless believe that it is to their benefit.

MR. FOX: No, I appreciate that. But I think that the point is that people ultimately have to decide for themselves whether they want to vote yea or nay for something. And so to the extent that the substantive consolidation

analysis factors into that, in a material way potentially, that people should have some understanding of what the underlying factors or so that they can decide, yeah, okay, if that's the debtors' decision, that makes sense based on the facts they've told me, and therefore I'll vote for it; as opposed to saying well, okay, they say they -- they decided, but I don't know why, so I don't --

THE COURT: No, but I just said why. And again, it's not a Augie/Restivo -- it's not, you know, like the nonsubstantive -- non -- twenty-five page nonsubstantive consolidation opinion that lawyers give. This is good for you.

MR. FOX: Well, okay.

THE COURT: I think there're two different points. They're going to -- if someone objects, the debtors are going to go through Augie/Restivo. But their first point is, as a matter of just business sense, it makes sense to do this.

MR. FOX: No, and I appreciate that. But as, you know, we heard from Mr. Tepper, for instance, a TOPrS holder, for instance, take the view that we'd be better off not consolidating because it'll help my recovery at --

THE COURT: But he's already -- but --

MR. FOX: -- but he's got two issues that he has to consider then. One is what's the recovery going to be, which you've addressed. The other is, even if I think I have a chance of -- or even if I think there's a material change in

our recovery, what are my chances of being able to be successful in doing that. And so that's why I say, to the extent the debtor added some facts about what lies behind their decision to do this, I think it actually is helpful to people making a vote that maybe they should just go along with it rather than not know.

THE COURT: Well --

MR. FOX: That's the point.

THE COURT: -- I don't -- I guess, my experience is that it's a big deal to mount a substantive consolidation fight. And I think if someone really is concerned about doing that as opposed to how to vote on the plan, they're going to come to -- they're going to come to Mr. Butler and probably to Mr. Rosenberg, and maybe to you as counsel to their indentured trustee, and say you know, what am I -- I think maybe I benefited by not having substantive consolidation here, and I want to mount a fight. Should I -- you know, tell me why I shouldn't. That's what I would do. No one should really count on the estate paying their legal fees to challenge this plan. I certainly understand the logic of -- I'm not talking about you. You have an indentured trustee lien and all that stuff. But just the notion that, you know, creditors can just sort of throw their hat in the ring to fight a plan, particularly something like on substantive consolidation, which is a very expensive proposition, and then think at the end of the day

they could be bought off by having their legal fees paid, that's not how it works. So I -- and again, this is not directed at you. I'm just looking at the benefit of laying this out in more detail, and you know, I guess if the debtors want to do it, they can, but it seemed to me that what they needed to do was explain to people more clearly why they're proposing it as an economic matter, and in particular why it's good for those creditors who -- on a sort of an academic basis, if you just look at the capital structure, would not benefit from it, and why it's still good for them. And that's what I really wanted them to focus on.

MR. BUTLER: And, you know, we're quite prepared to do that. We don't -- what we're not trying to do is disclose a litigation case that hopefully will never have to be litigated.

THE COURT: Okay.

MR. FOX: Not asking, just to, you know.

MR. BUTLER: That's what you're asking.

THE COURT: Well, what you sa -- what, you know -- I'm sure you read in those opinions, once you start on that road, you have disclosure, you end up with a twenty-five page document. I mean, that's -- City Bar Association is trying to draft a model one, but it's still twenty pages, so.

MR. FOX: Thank you, Your Honor.

THE COURT: Okay.

MR. BRILLIANT: Your Honor, I think you've already

overruled a number of the disclosure objections that we had raised in our papers, and I'm not going to reiterate them. There are, you know, a few things that -- that we had asked for that haven't been addressed so far.

THE COURT: Okay.

MR. BRILLIANT: One of the issues that we perceive here is that, to a large extent, I guess there's a large, I guess, disagreement, or people have different perceptions about valuation. In disclosure statements, generally it's been my experience, and I'm sure Your Honor's as well, having looked at, you know, the Loral disclosure statement that sometimes you get, like you do here, just, you know, three pages of boilerplate analysis from the debtors' financial adviser on valuation, and in other situations, like I said -- like I mentioned, you know, Loral, some of the airline cases, you get a much more fulsome, you know, disclosure about valuation, so that, you know, people can look at it and get a better sense as to what it was that the debtors' financial adviser did, and then they can reach their own conclusion as to whether they agree with value.

We had requested that the debtor provide a little bit more than, like I said, it was pretty much just, you know, boilerplate language that they did a valuation and these were, you know, the ranges they came out to, and this is how it, you know, it turns into, you know, share prices, so that we, you

know, creditors in general can get some sense as to whether they agree with the -- you know, the -- you know, the Rothschild numbers or other valuations. I believe it's Exhibit C, Your Honor.

THE COURT: No, it's Appendix D.

MR. BRILLIANT: D, Your Honor.

THE COURT: Okay.

MR. BUTLER: I think, Your Honor -- I think what we're doing here, what the real issue here is, Mr. Brilliant, in discovery, got a copy of the Rothschild valuation report, which is very detailed, and indicates what the board considered. And he got it in discovery, although he's not permitted under his protective order to share it with his clients. And the -- what we have in Exhibit D here -- Appendix D here, and Mr. Shaw would indicate about having the Rothschild, is the standard report that they have given in this and other Chapter 11 cases when they are an investment banker to the debtors. We do not believe that it's appropriate or necessary to put Rothschild's complete valuation report or a further summary of it out into the marketplace, other than the results.

MR. BRILLIANT: Your Honor, this is not a desire on my part to share the report with my clients, but instead to, you know, have the disclosure statement contain, you know, what I believe would be adequate information for people who are

voting on it. As I said, I really do believe that at the end of the day this is really about perceptions of value. The debtors have one perception; the marketplace currently has a different perception; my clients have a third perception; and at the end of the day, whether or not you think this is a fair plan, depends upon what you think is the value of what you're getting. And, you know -- you know, right now it does say what the low, the high end and the midpoint of the Rothschild range is, but that's really all it says. It doesn't dis -- you know, and that they did, you know, typical -- you know, typical, you know, analyses. I don't even believe they give the date of their -- of their report. So to the extent that, you know, somebody wanted to look in, you know, and reach a conclusion as to whether things in the market had changed since then, it's just very -- to say it's even bare bones, I think, Your Honor, is an overstatement. It's just a bunch of boilerplate language that they did an analysis.

THE COURT: Well, I -- I don't agree with that. I also don't agree with the notion that you would put in a full valuation analysis. It's fair to put the date of the --

MR. BRILLIANT: I'm sorry, excuse me.

THE COURT: -- it's fair to put the date of the valuation in. You should do that.

MR. BUTLER: I thought it was in there.

MS. SPEAKER: It says as of the 31st of December.

THE COURT: Yeah. I mean, it is --

MR. BRILLIANT: Yeah, when they prepared it, Your Honor, I mean it says it's as of 12/31 --

THE COURT: Yeah --

MR. BRILLIANT: -- but that's not --

THE COURT: -- at least it should say, you know, when it was last updated.

MR. BUTLER: That date, Your Honor, I'm advised by Ms. Shaw, is October 19, 2007. We'll add a sentence that says that.

THE COURT: Okay. You know, this is a public company. There's a lot of public reporting, and there's a lot of -- a lot of disclosure in here already. So I don't think you need that.

MR. BRILLIANT: Your Honor, with respect to one of the other issues we had raised with respect to the TOPrS. We had requested that the disclosure statement disclose that the plan investors, you know, are holders of the TOPrS, and that they had, you know, a role in negotiating the recoveries for the TOPrS. You know, we think that somebody, you know, voting to determine whether or not they wanted to weigh their seniority rights would like to know how the settlement was arrived at, who it was negotiated with, and whatever influences they would have. I understand that Your honor ruled this morning that it's just legitimate leverage, and that may be,

but it's still something that I think somebody would want to know in voting on the plan.

THE COURT: Well, I wasn't really addressing the TOPrS when I talked about leverage. But it's -- if I understand it, we have disclosed it.

MR. BUTLER: I thought it was disclosed that they owned the various levels of debt securities.

MR. BRILLIANT: It's not disclosed -- it says that they own debt securities, it doesn't disclose what percentage of the TOPrS they own or even -- I believe you just disclosed the same as what's in their 2019. They have 283 million dollars of debt securities. It doesn't say which ones they are.

THE COURT: All right.

MR. BRILLIANT: Am I wrong about that?

MR. BUTLER: No, it doesn't have the exact percentages, because I think until the -- it does describe what they own, but not how much they own. That's right.

MR. BRILLIANT: Does it say debt secu -- it says debt security, but that doesn't -- did you guys change it? Does it no longer just say it?

MR. BUTLER: I mean, we had -- the point is we have information which has been shared discovery with Mr. Brilliant, some of which, I think, was put on the record in the litigation yesterday by Mr. Brilliant.

THE COURT: Well, I don't think you need to give percentages. Because they could change. But I do think it's okay to say that the debtors are informed that the plan investors own, whatever the number that was in there already --

MR. BUTLER: All right.

THE COURT: -- of the debtors' present debt. And that may include whatever has been listed on -- as a matter of public record.

MR. BUTLER: Yeah, I mean my point is --

THE COURT: Not percentage, just what it is.

MR. BUTLER: -- yeah --

THE COURT: -- what different ones. I don't believe -- and I don't believe the record really reflects this, that they played an undue role in negotiating the treatment for the TOPrS.

MR. BUTLER: Your Honor, I'm just trying to figure out what we can disclose and not disclose. Mr. Brilliant took discovery, got that information, elicited some of that information during the course of the hearing. We have some of the information that -- about that --

THE COURT: Well, you can only disclose what has been disclosed publicly.

MR. BUTLER: -- right. But it may not be complete, what Mr. --

THE COURT: No, I would say that you would have to

put a caveat around it.

MR. BUTLER: Yeah. Because -- because we have a non-disclosure agreement, where they made certain disclosures to us, but it's confidential. We're not permitted to disclose it.

THE COURT: No. Just base it on what Mr. Teppler said publicly.

MR. BUTLER: Okay.

THE COURT: And not percentages. Just that they hold -- various plan investors hold --

MR. BUTLER: I don't know what was actually -- I may have to come up with --

THE COURT: I don't even -- I have in my notes. I mean, it was basically across the capital structure. It was senior debt, junior debt, stock --

MR. BUTLER: Right.

THE COURT: -- preferred stock.

MR. BUTLER: Right. They own across the capital structure. I just don't know what he relevant percentage --

THE COURT: You don't -- no, but you don't have to give the --

MR. BUTLER: I don't have to give the amounts.

THE COURT: No.

MR. BUTLER: I just say -- okay. Thank you, Your Honor.

THE COURT: I mean, the records show that none of it

was -- was a -- well just leave it at that.

MR. BRILLIANT: Your Honor, like Mr. Fox, and I'm not going to belabor this, but I also believe that in addition to the summary, people look at the distribution chart. And I think that some kind of, you know, range of recovery should be in the --

THE COURT: But that's part of the summary. I mean, it's like one page after -- it's all -- that's the summary. Those whole ten pages.

MR. BRILLIANT: Right. But I'm saying people won't necessarily read, you know, the summary and the chart. They may just look at the chart.

THE COURT: I don't -- you know what, on this one, I don't think that's right. I think this is too complicated to just look at the chart. And I think a reasonable person would know that.

MR. BRILLIANT: You --

THE COURT: I mean, I read -- I -- it's easy to read, and that's what I'd read. And I think if you -- you're right. A lot of people just turn to the chart normally. With this one, if I turn to the chart, I would decide, I think, pretty quickly, given its use of the term nego -- you know, plan value, and --

MR. BUTLER: Your Honor, I point out the chart comes before -- the plan value -- valuations all come before --

THE COURT: Yeah.

MR. BUTLER: -- the distribution charts do. So it's in the earlier part of the summary.

THE COURT: Let me -- let me just look at this one second.

(Pause)

THE COURT: You know what, Mr. Butler, put a footnote after the phrase "plan equity value" in the hundred percent -- where it says a hundred percent. On a distribution of new common stock at plan equity value, on the chart.

MR. BUTLER: I'm looking for it. Yes, Your Honor?

THE COURT: Put a footnote there with a cross reference to the pages of the summary that discuss that issue.

MR. BUTLER: Is that true in every -- every -- just in that -- I mean, that part appears throughout this chart. I -- can I -- I was thinking, Your Honor, if you want to do it, the other place if you want to --

THE COURT: No, I would -- I think it's really key for the --

MR. BUTLER: -- the other place we could put it, Your Honor, is at the top of page Romanette 22, which is the introductory to the -- introduction to the charts. And it has a bunch of cautionary items in it already. We could add a sentence right there that makes reference.

THE COURT: All right.

MR. BUTLER: That way it's applicable to the entire set of charts.

THE COURT: That's fine. Do that.

MR. BRILLIANT: In there, Your Honor, the general unsecured claims, which is all I really care about.

THE COURT: Yeah, I know but --

MR. BUTLER: The debtor cares about all of our constituents, not just --

THE COURT: Yeah. I think you're right. At the start of the -- at the start of the chart section, you can put that cross reference in.

MR. BRILLIANT: The only people it really matters to or who don't know about it are the general unsecured. I think everybody else --

THE COURT: No, that's not true. The shareholders are voting.

MR. BRILLIANT: The shareholders are -- are getting, you know, small amounts of shares, but they're mostly getting warrants.

THE COURT: It means a lot to them, you know. It's like Danny Webster said about Dartmouth. You know, it's a small distribution but there are those who love it. Or maybe not. They want to know.

MR. BRILLIANT: Your Honor, we had requested in our objection that the debtor give a little more description in

connection with the -- the exit financing. Currently it is not a condition to confirmation of the plan that they have exit financing, but instead a condition of consummation of the plan. Now, I don't know whether if they didn't have the financing committed by the confirmation date whether Your Honor would hold a confirmation hearing or not. One thing we had asked them to hold -- to disclose was that if they -- if the plan was confirmed and the exit financing wasn't in place at that time, that you know, there could be -- the debtor could be in a situation where the plan was confirmed and didn't go effective for a lengthy, you know, period of time. You know, we hope that that's not going to be the case, but there is not a provision in the plan that it automatically terminates, or --

THE COURT: But that's why they have the feasibility requirement in the Bankruptcy Code. So the plan's not going to be confirmed unless it's feasible. So I don't think they need to get into that. I don't -- that's too speculative a scenario.

MR. BRILLIANT: Well, Your Honor, obviously as I'm sure you probably are aware, I'm a, you know, a little disappointed in the -- Your Honor's ruling on the classification and the, you know, subordination, but there's nothing I can do about that --

THE COURT: Well, let's be clear. It's not a ruling for purposes of objecting to the plan. It's an articulation of

why I believe the plan should be able to go out for a vote, notwithstanding the concerns you've raised on both classification and disparate treatment. And my view is that the cost of setting the plan out and going down this path is not outweighed by the ability of someone to come in, not a class, but an individual creditor, and objection under 1122 and under 1123(a)(4), on those bases, because I believe that there's a reasonable chance that if such an objection were sustainable, it could be fixed under 1127 based upon the way the debtors are counting the votes and also based upon the numerous disclosures in this document now, about the importance of people voting. So I'm not ruling, ultimately, on confirmation today. I'm just ruling that there's enough to let it go out.

MR. BRILLIANT: I understand, Your Honor. But I guess, you know, my view, which is not important here is that the -- is that necessarily on this point, but that, you know, under 1123(a)(4) in particular, you know, given, you know, that there is disparate treatment for people in the same class, the debtors are at least initially, you know, choose to, you know, how they want to separate the claims with the expectation that they could always reconfigure it later. My concern is that it be -- it's become -- it's just very confusing, you know, to, you know, to people who are, you know, in a class and their votes may be counted in connection with that class and also

maybe counted in a -- in a disparate way, you know, for purposes of waiving the subordination agreement. Although I understand that the language that you -- that Your Honor has directed be added will clarify that somewhat. But it doesn't really clarify it that much from the standpoint, you know, is it a two-thirds and majority of people who are affected by the subordination agreement in which that's going to be considered, or -- it's just -- it's just completely, you know -- you know, vague and --

THE COURT: Wouldn't it tell you to vote -- if you believed strongly on this issue, it doesn't matter whether -- what percentage it is, you yourself, better vote. I don't -- I don't -- I mean if you --

MR. BRILLIANT: Well, I think that's right, Your Honor. But whether or not you want to, you know, vote and challenge the plan or not vote or, you know, depends upon what you think the rules of the road are. And the disclosure statement doesn't -- doesn't tell you.

THE COURT: Well, I'm not -- I wouldn't tell them the rules of the road anyway, because I believe there's a very open issue on this. You're relying on a 1980 Chapter 13 case from the Western District of New York.

MR. BRILLIANT: Your Honor, I believe I'm relying on three Second Circuit Court decisions that predate the --

THE COURT: Predate --

MR. BRILLIAN: -- the Bankruptcy Code --

THE COURT: -- exactly. That predate the Bankruptcy Code.

MR. BRILLIANT: -- which -- and I think, Your Honor --

THE COURT: So there's an issue there. Because the debtors have cited a number of cases for their proposition, and the leading commentator on bankruptcy supports them in large measure. So I'm not going to spell out the rules of the road. And I'm not going to turn this into a confirmation objection. I believe there's enough to let it go out for a vote, because I think the vote is what counts. And then a lot of this is more performance art. And so I've had enough of this point.

MR. BRILLIANT: You know, I don't have any -- anything else that I want to --

THE COURT: Okay.

MR. BRILLIANT: -- raise orally, Your Honor. You have our pleadings.

THE COURT: Okay.

MR. BUTLER: Your Honor, could we take a brief recess to -- so we can go back to the solicitation --

THE COURT: Yeah.

MR. BUTLER: -- that we have to sort of regroup.

THE COURT: While you're doing that, my markup is here, and someone should go and Xerox it.

MR. BUTLER: Thank you.

MR. BRILLIANT: Your Honor, I do have one more point. It's not a disclosure point. But I don't know what the procedure's going to be. One thing, by not dealing with the classification and the voting issues up front is that the way the debtors are proposing in their timeline is that the -- is that the balloting report would be given, you know, filed and disclosed the day before the confirmation hearing. I don't believe that, you know, that that's, you know, going to be, you know, sufficient time. I -- you know, if anybody wanted to object and had, you know, these issues, obviously they could, you know -- you know, raise the classification, you know -- you know, issue, and raise the 1123 issue, but they're not going to -- they're not going to know until, you know, if Your Honor adopts their schedule, until really the day before as to how the votes actually came out and how the debtor is slicing and dicing them or, you know, modifying the classification of claims to deal with the issues. I'm just concerned that it doesn't provide, you know, sufficient -- sufficient notice.

MR. BUTLER: Your Honor, perhaps we can discuss that during the recess and maybe come back with a partial solution for it. I view the timeline as part of the solicitation procedure's motion.

THE COURT: Okay.

MR. BUTLER: If we can deal with that at that time,

I'd appreciate it.

THE COURT: Just while I'm thinking. I -- right now you proposed a ballot certification on January 16th?

MR. BUTLER: Right, that's the -- right. The certification that comes in on the 16th in advance -- which would date the final purchase. I think the final is the day before the confirmation hearing. But that's not -- you know, we will have provisional recording that, you know, you get the provisional balloting, and that's the final certification by the agent. And I would certainly think we could share provisional reports with people who filed objections on that issue by the objection deadline. So I mean, I think there's a way to --

THE COURT: All right.

MR. BUTLER: -- parse this. I mean, you know, as the Court knows, when you -- you know, there's a final report, but there are, you know, periodic reports we get. And I'd like to discuss that --

THE COURT: All right.

MR. BUTLER: -- if I could, during the recess.

THE COURT: That's fine.

MR. BUTLER: Thanks, Judge.

THE COURT: Well, I don't know about you, but I'd like to eat something. So I'll be back at 4.

MR. BUTLER: Four o'clock. Thanks, Judge.

THE COURT: And Karen, you can give them my markup. Why don't you have them -- if they can't read it, maybe they can talk to you about it.

MS. SPEAKER: Do you want them to Xerox, or do you want them to --

THE COURT: Yeah. They should make a Xerox of it. Yeah, I guess.

(Recess from 3:06 p.m. until 4:04 p.m.)

THE COURT: Please be seated. Okay. We're back on the record in Delphi Corporation and I think -- are we at the -- are we now dealing with the solicitation procedures and timelines?

MR. BUTLER: Yes, Your Honor. Your Honor, also for the record, appearing with me for this portion of the hearing is my partner, Ron Meisler, who has been most directly involved in the solicitation procedures matters in case the Court has specific questions about timetables and in terms of working with the solicitation agents.

With respect to the timeline, let me just sort of give a sense -- we've talked -- I have talked to Mr. Brilliant during the recess about providing -- what we agree to do is provide objectors. People who file objections by the objection deadline who would like information regarding balloting can contact us and we'll provide them with the same provisional balloting information that we have.

THE COURT: What's the proposed objection deadline again?

MR. BUTLER: Right now it's -- Your Honor, it's proposed for January 11th.

THE COURT: Okay. Same day as the ballot deadline?

MR. BUTLER: Correct.

THE COURT: Okay.

MR. BUTLER: And it's ten days before -- we tried to -- and exhibit deadline is ten days before that. We tried to meet --

THE COURT: Okay.

MR. BUTLER: -- all the requirements Your Honor asked us to.

THE COURT: All right.

MR. BUTLER: And what we were trying to do, Your Honor, is among all the multi variable equations we have in this case is actually try to emerge in the first quarter of the year where 10Ks are being filed and there's rights offerings being run and we have a lot of other regulations we have to follow in terms of just trying to make sure we do everything correctly. You know, we're trying to shoot for an emergence, if we can stay on the timetable, that would allow us to emerge no later than February 28th and hopefully a few days prior to that. We're shooting, I think, for a little bit earlier than that if it's possible during the month. It just depends on a

variety of issues. I mean, the point is I think, Your Honor, for some sense, the actual closing of this transaction, the corporate closing, will be fairly significant in terms of what has to come together to actually emerge. And the -- 'cause that's when a number of the agreements with the six unions go live and there's documentation associated with that, General Motors, plus all the normal plan documentation and the financing matter. So it's just going to be a fairly complex closing.

So we're trying to sort of keep on the schedule. One of the things we looked at in Your Honor's chambers -- have given some different dates to look at in terms of things that might be available on the Court calendar. It seems to us that if we try and shoot for the 17th and 18th -- it's a Thursday and Friday and it's contiguous -- we're able to do that. The next sort of dates were the 18th and the 22nd. The problem from my perspective on that is I'm just trying to sort of be mindful of the fact that we all have lives, too. That would be bookends on the three day holiday weekend.

THE COURT: Right.

MR. BUTLER: And to have a contested confirmation hearing on both ends of that weekend just strikes me as -- and planning for it that way.

THE COURT: I'm looking at colleges that weekend. So --

MR. BUTLER: Yeah.

THE COURT: Not for me but --

MR. BUTLER: Yes. Yeah, just planning it that way just seemed to us --

THE COURT: All right.

MR. BUTLER: So we're trying to shoot for the 17th and the 18th. And in order to do that, this -- we have, I think, talked with the -- over the course of the afternoon. We would need to be able to get all of the proofs of this to the printers in final form by very early Tuesday morning. So we'd have to be done by late Monday which means, essentially, we need to get Your Honor's order rendered by Monday to do that. And then we -- I think the timetable then works although everyone believes it's tight. So I think this is the timetable we have up here which is an exhibit to the hearing -- we have up on the slide is what I think we're proposing. I'm not sure at this point that anybody has any objections to it but I'll ask in terms of the timeline itself.

So I don't know if the Court has any of its own concerns in terms of just the timing of matters. This would provide for a twenty-seven day solicitation period assuming that it's mailed on the last day to mail and it goes through the normal deadline. That would be what is provided here.

THE COURT: That's the period to the actual vote date?

MR. BUTLER: Yes. That's the actual solicitation. If we mailed it on the last day permitted to mail, there would be twenty-seven days from that day to the day the final votes were due.

MR. BRILLIANT: Your Honor, the only issue we raise with respect to the voting record date, which, I guess, now got as November 26th, would typically be the date of entry of the disclosure statement.

THE COURT: Well, those were one of the questions I had. Why did you pick that date? Does that tie in to what your voting agents have told you?

MR. BUTLER: Part of the problem has been to assemble all of the information for voting. At one point -- I think we could have at one point updated it. At this point, all of the data is in the process of being pulled in order to be able to solicit. And that's been part of the problem.

THE COURT: As of that date?

MR. BUTLER: Yes, as of that date. I mean, it's -- quite honestly, I'd love to say that there was magic to that date. We could have actually updated -- when the hearing moved another few days, we actually could have moved it another few days had we thought to do it. I'll concede, Your Honor, that we didn't do it at that point. And now the solicitation dates are pulling all the data in order to be able to commence the execution of the solicitation.

THE COURT: Well, it's reasonably close.

MR. BRILLIANT: Okay. I assume the main issue you have is with respect to the equity not the debts?

MR. BUTLER: Well, actually, no. There's a variety of issues in trying to get through -- certainly the equity is a significant thing but not every bondholder is known to you or known to the --

MR. BRILLIANT: But those are the -- well, those are the beneficial holders and they -- I mean --

MR. BUTLER: Well, that's --

MR. BRILLIANT: It's all going to be held in street names. So --

THE COURT: Well, at least from my experience in another case recently, the Allegiance case, these are things that can be done overnight. I'm comfortable with that date as a record date.

MR. BUTLER: Thank you. Any other -- anyone have any other issues on timeline unless the Court does?

THE COURT: How do you propose to memorialize -- you propose putting it in the order, just sharing the information to objectors on voting?

MR. BUTLER: I can certainly add that to the order.

THE COURT: Okay.

MR. BUTLER: We're happy to do it.

THE COURT: All right.

MR. BUTLER: That certainly was my understanding. Mr. Brilliant, I'm happy to put it in the order.

THE COURT: Okay.

MR. BUTLER: Okay. So we'll modify the order and indicate that anyone who files an objection after -- as of the objection filing date can give us notice and we'll provide periodic outputs.

So I think, Your Honor, unless you have -- the rest is whatever the Court's questions are.

THE COURT: Yeah. Well, I had two points on the procedures. Yeah. First, I thought that subject obviously to people's ability to seek a shorter period under the local rules that people, in response to a claim objection, should have ten days following the objection rather than seven to make their 3018 motion. And I don't -- just thinking about the timing, I don't think that that screws it up. I don't think you're expecting any -- okay. And this is implicit but I put it in the order -- I always do this. The idea about debtors given extension of the voting deadline, I put in subject to necessary -- any necessary Court approval on that. It's not just a --

MR. BUTLER: It's not our deadline.

THE COURT: It's not an automatic. And then the last point I had was a question. I don't think these provisions or this provision was in the original motion or in the order.

Right at the end of the order, there's this paragraph Trading in Delphi's Securities to the extent Delphi opens a trading window for insiders to trade and Delphi's securities members of the creditors' committee and equity committee will have the same opportunity. What --

MR. BUTLER: I'm sorry. This is paragraph -- I'm sorry?

THE COURT: Paragraph 45. It's right next to the last paragraph in the order. And I just don't -- I don't know where that's coming from and what's going on there with that provision.

MR. BUTLER: Oh. Your Honor, the -- I will tell you. I can explain what that provision is. The window for trading in these cases for the members of the fiduciary -- of the equity committee and the creditors' committee and the window for trading by insiders of the debtors has been closed, I think, since October 2005. Once the disclosure statement is out and is approved by Your Honor as out, the question will be whether there will be the opportunity for a window to be open. This was a much more relevant discussion about two months ago when we thought that there would be a timing between the third quarter queue and the disclosure statement being at the same time.

THE COURT: When everything's public?

MR. BUTLER: Everything's pub -- there's a window in

which everything's public. And we had been contacted by counsel for the committee saying that if in fact there was a window open by the debtors -- and that's done by our general counsel based on the reviewing of the securities laws. If a window is open, it's properly opened up. The two statutory committees want to make sure that it was opened up for their members so that no one could claim that they were acting improperly for the same period of time. I think in reality, Your Honor, given the way the timing is going, I suspect it's going to be more difficult to open that window. But that's the reason it's in the order is at the request of the committees and it was for that purpose.

THE COURT: But also, I mean, the committees, they have -- you know, they have different issues about different constraints on trading. The U.S. trustee has her view on the duties of committees to trade and not trade.

MR. BUTLER: Well, the question was only if in fact there is a legitimate window open that is applicable to insiders of the debtor based on the securities laws because from a bankruptcy perspective, everything material -- assuming Your Honor is (indiscernible), everything material that we have for these matters is going to be out, you know, in terms of the -- you know, for a moment.

THE COURT: No. My point's a little bit different, which is separate and apart from the securities laws. And I

know that -- I believe there are trading orders in place for the committees. Are there?

MR. BRILLIANT: No.

THE COURT: No, there are not.

MR. BUTLER: No.

THE COURT: So, I mean, separate and apart from the securities laws, there are issues about committee members trading. And I guess I don't want this to be an implica -- if you want to change this to say to the extent Delphi determines to open a trading window for insiders to trade in Delphi's securities, it will inform counsel for the committees of its intention to do so, that's okay because then they can take whatever appropriate steps they want to take with the U.S. trustee or with the Court.

MR. MELWANI: Yeah, I think, Your Honor -- Vivek Melwani from the equity committee -- on behalf of the equity committee. For our guise, it was more an issue of getting the protection of the company making the decision that in addition to the disclosure statement order and the disclosure statement, that there was no material information outside.

THE COURT: Well --

MR. MELWANI: I don't think it was their expectation that people would stay on the committee. And just to give a specific example, there's at least two members of our committee whose share count will result in them only being entitled to

fractional shares. So if they want to realize --

THE COURT: All right. The way it's drafted, though, it seems like -- you know, they shall have the opportunity to trade suggests that they could stay on the committee and do that. Maybe the thing to do is to simply provide that you'll give the committee members advance notice of your determination to do so and your conclusion that it would be as a securities law matter appropriate to do so, if you're willing to go that far or whether you just want to give them advance notice.

MR. MELWANI: I think I'd probably just give them notice, Your Honor.

THE COURT: All right. Then just give them advance notice. And then you all can do whatever you think is appropriate as far as seeking permission or your clients can get off the committee, I suppose.

MR. MELWANI: Okay. Thank you, Your Honor.

MR. BUTLER: Thank you, Judge. Your Honor, if may also, overnight we did make a -- and it was one of the last exhibits for the day. We did make -- add the reservation of rights language. If Your Honor wants to see that.

THE COURT: I think I did -- I saw the blackline.

MR. BUTLER: Okay. That's all in --

THE COURT: Okay. All right. The debtors have sought and would have granted in one order, one proposed form of order, an approval of their disclosure statement dated most

currently December 6th, 2007 as well as procedures for solicitation of votes on the plan obviously scheduling the hearing on confirmation of the plan and various deadlines in connection therewith including the ballot deadline and the objection deadline as well as for notices that trigger procedures for resolving cure claim disputes in connection with contracts to be assumed and assigned at or around confirmation of the plan and procedures for reconciling and resolving disputes relating to post-petition interests.

I have reviewed the objections to the disclosure statement that were filed many of which have been withdrawn. I've also reviewed the disclosure statement and plan myself in light of the standard set forth in Section 1125 of the Code. And at the hearing today I've given my comments on the disclosure statement in the areas that I believe it must be changed to provide adequate information to voters. A number of those comments reflect comments and objections made by various parties in the case. However, in other respects, having considered those objections and in particular objections by the continuing remaining objectants that I haven't yet ruled on, Wilmington Trust, and the ad hoc group of bondholders, I have overruled those objections for the reasons stated during the course of the hearing.

First, generally speaking, that I believed they were, to the extent I have not adopted them, overkill and/or unduly

putting in the debtors' document the objectors' litigation positions or, in addition, that to the extent the objections were arguing that the disclosure statement couldn't go out because various features of the underlying plan rendered that plan facially unconfirmable or likely not to be confirmed unless it was argued the expense of seeking confirmation would not be warranted. I've overruled those objections based on my conclusion that the plan is not facially unconfirmable or, in the alternative, that the plan may be subject to modification under 1127 of the Code in a relatively easy way given the manner in which the debtors will be tabulating votes that the plan should be indeed voted on and creditors should have the choice and shareholders should have the choice whether to assume or reject the plan in light of their analysis of the effect of accepting the plan or, in the alternative, rejecting the plan would have on their recovery.

Those changes that I've required are either handwritten in a draft I've given the debtors after the disclosure statement hearing or have, I believe, clearly been set out on the record. And I understand that the debtors will be implementing those changes in a couple of places in consultation with counsel for the MDL group and the creditors' committee. When they submit those changes and in blackline as against the December 6th draft to chambers, they won't be filing those changes with the Court but they will be copying

the objectors, the official committees, MDL counsel, GM's counsel, plan investors' counsel, that is, Appaloosa's counsel, unions' counsel and I guess will have the usual list of people who have been copied in on the modifications as they've been turned out over the last few weeks so that those parties can review them to see if they're consistent with what was set out on the record. I'll review them also in all likelihood Monday afternoon and we'll contact him, through my chambers, the debtors' counsel about whether there needs to be any further changes in light of any discrepancy between what I understood and what was in the document. And once I'm satisfied that the changes have been made appropriately, then that document would be filed. That document, if it's consistent, as I said, with the changes I've laid out, I believe contains adequate information for purposes of 1125 of the Code and will therefore properly be sent out pursuant to the solicitation procedures.

I've reviewed those procedures with a few minor comments that I've described on the record which I've put into the order. Those procedures are fine and will be -- that order will be entered when the disclosure statement is ready to be approved.

Let me say that although the equity committee's motion for an adjournment of the disclosure statement hearing was withdrawn, I did consider when reviewing the disclosure statement, that is, the December 6th one, whether there was a

good basis for suggesting that there should be further notice of that document. It's the normal practice in Chapter 11 cases, and particularly in large ones, for there to be a number of changes to the disclosure statement after the notice period required by the bankruptcy rules. And the final document that is approved often has considerable amount of blacklined changes in it the theory being that Chapter 11 is, at least at this stage, a process where there are frequent negotiations. And also, of course, that the process itself of approving a disclosure statement requires sometimes additions to the document based on what the parties in interest have to say about it. Because of that, I would normally only require significant additional notice of a revision to a disclosure statement if it significantly altered the underlying business related information in the document since that is not a matter that people are negotiating and can keep on track and on top of.

I reviewed this document and the changes of that nature are minimal and, I believe, clear. No one has questioned them. And as a result I think that the notice here of the amendments to the disclosure statement was adequate.

So, as I said, I will be reviewing the changes on Monday and hope to be able to enter the order on Monday afternoon.

MR. BUTLER: Thank you very much, Your Honor.

THE COURT: Okay. Thank you. This is a housekeeping matter. I don't know if you still have exhibits in the other courtroom, 601, but I'd ask, particularly since it's a Friday, if you could move those out, find out if anyone's fallen asleep in there and wake them up and generally clean out Judge Peck's courtroom. Thank you.

(Whereupon these proceedings were concluded at 4:28 p.m.)

I N D E X

E X H I B I T S

DEBTORS'	DESCRIPTION	ID.	EVID.
Exhibits 1-81	Various documents related to hearing		51, 8

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' entry into amended EPCA agreement approved	39	14
Debtors' request for a waiver of the 10-day stay under Section 6004 of the Bankruptcy Code approved	40	7
Cheryl Carter's objection to disclosure statement overruled	44	23
Debtors' request for approval of the modified disclosure statement as well as approval of the solicitation procedures approved	54	23

C E R T I F I C A T I O N

I Lisa Bar-Leib, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Lisa Bar-Leib
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December 11, 2007

Signature of Transcriber **Date**

Lisa Bar-Leib

typed or printed name